

COMMON-VVELTH
OF ENGLAND, AND
MANER OF GOVERNMENT
THEREOF.

Compiled by the honorable Sir Thomas Smith, Knight,
Doctor of both lawes, and one of the principall Secretaries
vnto two most worthie Princes, King EDWARD, and Queen
ELIZABETH: With new additions of the cheefe Courts
in England, the offices thereof, and their severall
functions, by the sayd Author: Neuer be-
fore published.

Scene and allowed.

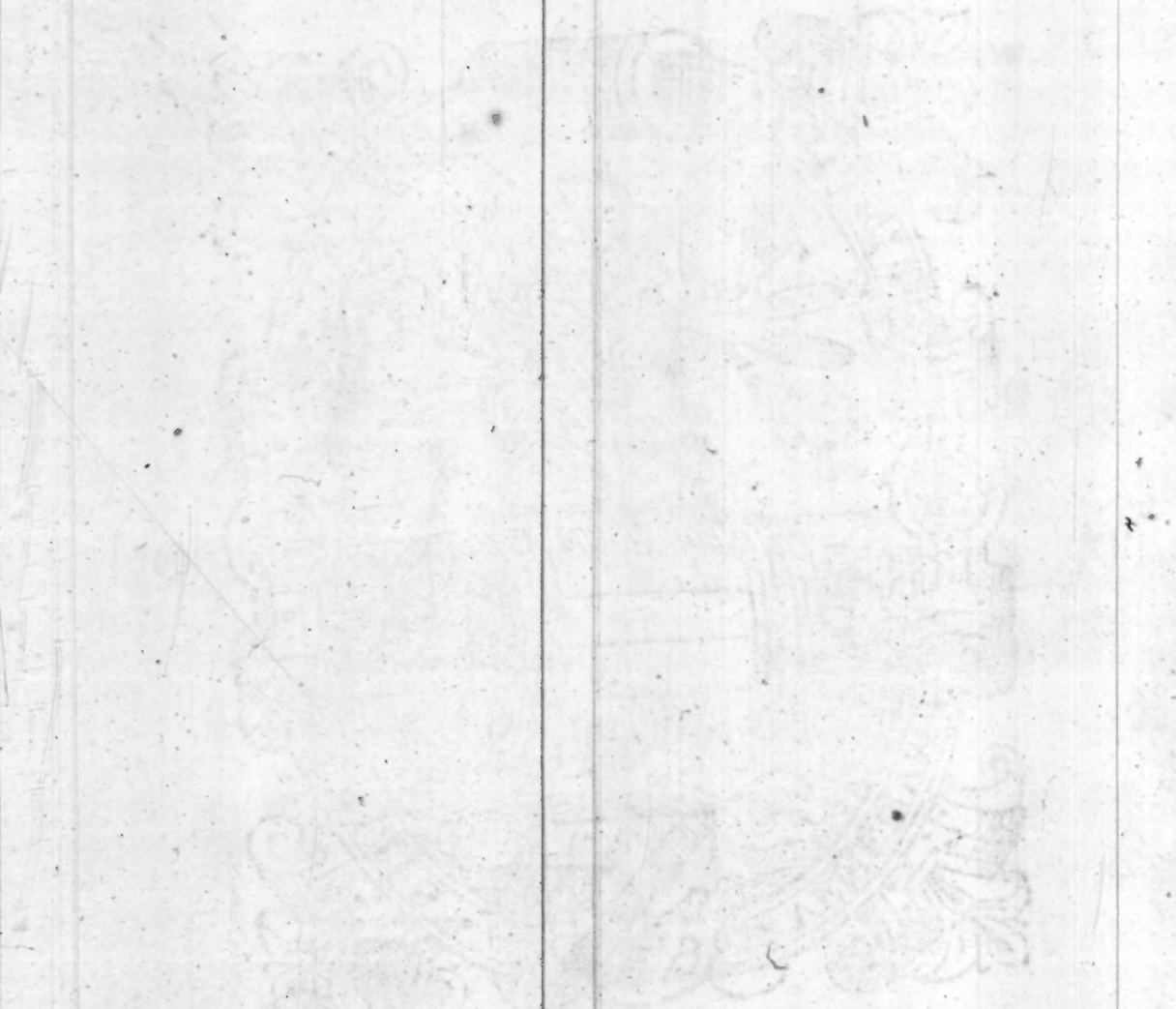


AT LONDON

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THE

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To the Reader. *Lead*



O conceale the graces inspired by God, or the gifts ingrafted by nature, or the vertues atchieued vnto our selues by industrie, in al ages, & of all wise men was accounted vnduetifulnes, vnkindnes and impietie vnto that Commonwealt, in the vvhich, and vnto the vvhich we are both bread and borne: but to suppress the vvortheie vworkes of any Author, may iustlie be iudged not onelie iniurie to the person, but euen enuie at the vvhole vvorld. Wherefore, chauncing vpon this short discourse, compiled by the honourable Knight Sir *Thomas Smith*, and considering that the same coulde not but be a great light vnto the ignorant, & no lesse delight vnto the learned in the lawes and policie of sundrie Regiments: I thought it part of my duetie, as vvell for reuiuing of the fame of so notable a man, as for the publicke imparting of so pitheie a Treatise, to present the same vnto thy indifferent and discreete iudgement. Wherein although the errors and rashnes of Scribes, appearing in the contrarietie, and corruption of copies, happening both by the length of time since the first making, as also by the often transcribing,

A 2

might

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To the Reader.

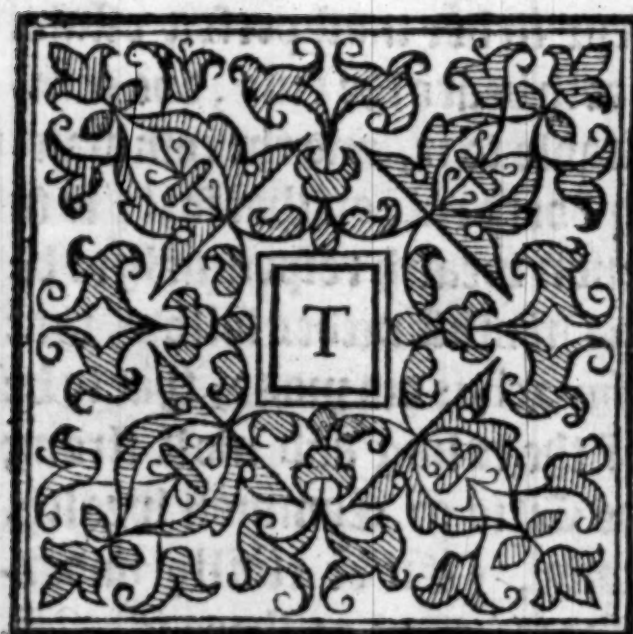
might iustlie haue beene mine excuse, or rather discourage: yet vveighing the authoritie of the Author together vvith the grauitie of the matter, I made no doubt but that the reuerence due vnto the one, and the recompence deserued by the other vvould easilie counteruaile all faults committed by a Clarke and vvriter. And vvhereas some termes or other matters may seeme to dissent frō the vsuall phrase of the common lawes of this Realme: notwithstanding, to him that vvill consider that the profession of the maker vvvas principallie in the ciuil lawes, and therefore not to bee expected as one excellent in both, and also that the finishing of this vvorke vvvas in Fraunce farre from his Librarie, and in an ambassage euen in the midst of vvaightie affaires, it cānot nor ought not vvithout great ingratitude be displeasing or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale and this honorable mans trauaile, assuring thy selfe that the same framed by an expert vvorkemaster, and forged of pure and excellent mettall, vvill not faile in prouing to be a right commodious instrument.

Vale.



THE MANNER OF GOVERNMENT OR PO- LICIE OF THE REALM OF ENGLAND.

Of the diuersities of common
Wealthes or gouernment.
Chapter I.



They that haue written
heretofore of Common
wealthes, haue brought
them into three most sim-
ple and speciall kindes of
fashions of gouernment.
The first, wher one alone
doth gouerne, is called of
the Greeks *Μοναρχία*, the se-

Monarchia.

cond, where the smaller
number, commonly called

of them *Αριστοκρατία*, and the thirde where the multitude
doth rule *Δημοκρατία*. To rule, is vnderstode to haue the
highest and supreme authoritie of commaundement.

Aristocratia.
Democratia.

That part or member of the common wealth is sayd to
rule which doth controwle, correct, and direct all other
members of the common wealth. That part which doth
rule, define and commaund according to the forme of the
gouernment, is taken in euerie common wealth to bee
iust and lawe: As a rule is alway to be vnderstode to
be

be straight, and to which all woꝝkes bee to be confoꝝmed, and by it to be iudged: I doe not meane the Lesbians rule, which is confoꝝmed to the stone: but y^e right rule whereby the Artificer and the Architect doe iudge the straightnes of euery mans woꝝke, he to be reckoned to make his woꝝke perfectest, who goeth nærest to the straightnesse.

What is iust or Law in euery Common wealth or gouernment.

CHAP. 2.

NOW it doeth appeare, that it is profitable to enerie common wealth (as it is to euery thing generallie and particularly) to be kept in her most perfect estate. Then if that part which doeth beare the rule, doe commaund that which is profitable to it, and the commandement of that part which doeth rule on that soꝝt, is to be accepted in euery Common wealth respectiue to be iust (as we haue said befoꝝe:) it must needes follow, that the definition which Thrasimachus did make, that to be iust, which is the profite of the ruling and most strong part (if it be meant of the Citie oꝝ Common wealth, is not so farre out of the way, (if it be ciuilly vnderstood) as Plato would make it. But as there is profitable, and likelihood of profite, so there is right, and likelihood of right. And as well may the ruling and soueraigne part commaunde that which is not his profite, as the iust man may offend (notwithstanding his iust and true meaning) when he would amend that which is amisse, and helpe the Common wealth, and doe good vnto it. Foꝝ in asmuch as hee attempteth to doe constraie to the Lawe which is already put, he therefore by the law is iustly to be condemned, because his doing is

iust.

is contrarie to the law, and the ordinance of that part
which doeth commaund.

Another diuision of Commonwealthes.

CHAP. 3.

But this matter yet taketh an other doubt: for of
these maner of rulings by one, by the fewer part, &
by the multitude or greater number, they which haue
more methodically, and more distinctly & perfectly writ-
ten vpon them, doe make a subdiuision: and diuiding
each into two, make the one good and iust, and the other
euill and vniust: as, where one ruleth, the one they call
a king, or βασιλεύς, the other τυραννος, a tyrant: where the
fewer number, the one they name a gouerning of y best
men ἀριστοκρατία, or *Remp. optimatum*, the other of the vsur-
ping of a few Gentlemen, or a few of the richer & stron-
ger sort ὀλιγαρχία, or *Paucorum potestatem*: and where the
multitude doth gouerne, the one they call a Common-
wealth by the generall name πολιτεία, or the rule of the
people δημοκρατία, the other, the rule or the vsurping of the
popular, or rascall and viler sort, because they be mo in
number, δημοκρατία ἄναττων.

*Example of changes in the maner
of Gouernment.*

CHAP. 4.

In Commonwealthes which haue had long continu-
ance, the diuersities of times haue made all these ma-
ners of ruling or gouernment to be scene: As in Rome,
kings, Romulus, Numa, Seruius: tyrants, Tarquinius,
Sylla, Cæsar: the rule of best men, as in time when the
first Consuls were: and the vsurping of a few, as of the
Senators after the death of Tarquinius, and before the

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Succession of the Tribunate, and manifestly in the Decemvirate, but more perniciouslie in the Triumvirate of Cæsar, Crassus, and Pompeius: and and afterwarde in the Triumvirate of Octavius, Antonius, and Lepidus. The common welth and rule of the people, as in the expulsiſing of the Decemviri, and long after, especially after y^e law was made, either by Horatius, or (as some would haue it) Hortentius, *quod plebs sciuerit, id populum teneat*: And the ruling and vsurping of the popular and rascall, as a little befoze Sylla his reigne, & a little befoze Caius Cæsars reigne. For the vsurping of the rascalitie can neuer long indure, but necessarily breedeth, & quickly bringeth forth a tyrant. Of this hath Athens, Syracuse, Lacedemon, and other old auncient ruling Cities had experience, and a man neede not doubt but that other common wealths haue followed the same rate. For the nature of man is neuer to stand stil in one maner of estate, but to grow from the lesse to the more, and decay from the more againe to the lesse, till it come to the fatall end and destruction, with many turnes & turmoyles of sickness and recovering, sel dome standing in a perfect health neither of a mans body it selfe, nor of the politike bodie which is compact of the same.

Of the question vvhath is right and iust
in euerie common wealth.

CHAP. 5.

¶ When the common wealth is euill gouerned by an euill ruler and vniust (as in the three last named which be rather a sickness of the politike bodie, than perfect and good estates) if the lawes be made, as most like they be alwayes to maintaine that estate: the question remaigneth, whether the obedience of them be iust, and the

the disobedience wrong: the profite and conseruation of that estate right and iustice, or the dissolution: and whether a good and vpriht man, and louer of his Countrey ought to maintaine and obey them, or to seeke by all meanes to abolish them? which great and hauty courages haue often attempted: as Dion to rise vp against Dionysius, Thrasibulus against the xxx. tyrants, Brutus and Cassius against Caesar, which hath bin cause of many commotions in common wealthes, wherof the iudgement of the common people is according to the euent and successe: of them which be learned, according to the purpose of the doers, and the estate of the time then present. Certaine it is that it is alwaies a doubtful and halsardous matter to meddle with the changing of the lawes and gouernment, or to disobey the orders of the rule or gouernment, which a man doeth finde already established.

That common vwealths or gouernments are not most commonly simple, but mixt.

CHAP. 6.

Now although the gouernments of common wealthes be thus deuided into thre, and cutting ech into two, so into sixe: yet you must not take, that ye shall finde any common wealth or gouernment simple, pure and absolute in his sort and kind, but as wise men haue deuided for vnderstandings sake, and fantasied foure simple bodies which they call elements: as fire, ayre, water, earth, and in a mans bodie foure complexions or temperatures, as cholericke, sanguine, phlegmaticque, and melancholike: not that yee shall finde the one vtterly perfect without mixtion of the other, for that nature almost will not suffer: but vnderstanding doth discern

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each nature as in his sinceritie : so seldome or neuer shall you finde common wealths or gouernment, which is absolutely and sincerely made of any of them aboune named, but alwayes mixed with another, & hath the name of that which is moze, and ouerruleth the other alwaies or for the most part.

The definition of a king and of a tyrant.

CHAP. 7.

Rex.

Tyrannus.

Where one person beareth the rule, they define that to be the state of a king, who by succession or election, cometh with the good will of the people, to that gouernment, and doeth administer the Commonwealth by the lawes of the same, and by equitie, and doeth seeke the profite of the people as much as his owne. A tyrant they name him, who by force cometh to the monarchy against the will of the people, breaketh lawes already made, at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his Commons, but the aduancement of himselfe, his faction and kindred. These definitions doe containe three differences: the obteyning of the authoritie, the manner of administration thereof, and the butte or marke whereunto it doeth tend and shote. So as one may be a tyrant by his entrie and getting of the gouernment, and a king in the administration thereof. As a man may thinke of Octavius, and peradventure of Sylla. For they both coming by tyranny and violence to that state, did seme to trauaile very much for the better order of the commonwealth: how be it, either of them after a diuers manner. Another may be a king by entrie, & a tyrant by administration, as Nero, Domitian, and Commodus: for the Empire came to them by succession, but their administration

administration was utterly tyrannicall, of Nero after five yeares, of Domitian and Commodus very shortly upon their new hono^r. Some both in the coming to their Empire, and in the butte which they shote at, be kings, but the maner of their ruling is tyrannicall: as many Emperors after Caesar and Octavius, and many Popes of Rome. The Emperors claime this tyrannicall power by pretence of that Rogation or *Plebiscitum*, which Caius Caesar, or Octavius obtained, by which all y^e people of Rome did conferre their power and authority vnto Caesar wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in cælo & in terra*) whose successor he pretendeth to be: yet the generall Councils make a strife with him, to make the Popes power either *Aristocratician*, or at the least *legitimum regnum*, & would faine brydle that *absolutam potestatem*. Some men do iudge the same of the Kings of Fraunce and certaine Princes of Italie and other places, because they make and abrogate lawes and edictes, lay on tributes and impositions of their owne will, or by the private counsell & aduise of their friends and fauourers onely, without the consent of the people. The people I call that which the worde *Populus* doeth signifie, the whole body, and the thre estates of y^e Common wealth: and they blame Lewes the xi. for bringing the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyrannicall power and gouernment. He himselfe was wont to glory and say, he had brought the crowne of Fraunce, hors de page, as one would say, out of Wardship.

Of the absolute king.

CHAP. 8.

Other doe call that kinde of administration which the Greekes doe call *αυτοκρατορια*, not tyrannie, but the absolute

absolute power of a king, which they would pretend that every king hath, if he would use the same. The other they call βασιλική ^{basilikē} or the Royall power, regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace the same is very dangerous, as well to him that doeth use it, and much more to the people upon whom it is used: whereof the cause is the frailtie of mans nature, which (as Plato saith) can not abide or beare long that absolute and uncontrouled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to keepe the Dictatorship above six monethes, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, Aristotle, (who of all wryters hath most absolutely & methodically treated of the diuision and natures of common wealthes) maketh this sort of gouernment to be one kind of kings. But all cometh to one effect: for at the first, all kings ruled absolutely, as they who were either the heads and most ancient of their families, deriued out of their owne bodies, as Adam, Noa, Abraham, Iacob. Esau, reigning absolutely ouer their owne children and bondemen, as reason was: or els in the rude world amongst barbarous & ignorant people, some one then whom God had endued with singular wisdom to inuent thinges necessarie for the nourishing and defence of the multitude, and to administer iustice, did so farre excell other, that all the rest were but beastes in comparison of him; and for that excellencie willingly had this authoritie geuen him of the multitude, and of the Gentiles when he was dead, & almost when he was yet liuing, was taken for a God,

a God, of others for a Prophet. Such among the Jewes were Moses, Iosua, and the other Judges, as Samuel, &c. Romulus and Numa amongst the Romanes, Lycurgus and Solon and diuers other among the Grækes, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Grækes is called *Τυραννίς* which of it self at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent and proud, vniust and not regarding the common wealth, committed such actes as were horrible and odious: as, killing men without cause, abusing their wiues & daughters, taking and spoiling all mens goods at their pleasures, and were not shepherds as they ought to be, but rather robbers and deuourers of the people, whereof some were cōtemners of God, as Dionysius, other while they liued like deuils, and would yet be adozed & accounted for Gods: as Caius Caligula, and Domitian: that kind of administration, and maner also, at the first not euill, hath taken the signification & definition of the vice of the abusers, so that now both in Græke, Latine, and English, a tyrant is counted he, who is an euil king, and who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe and his, and to satisfie his vicious and cruell appetite, without respect of God, of right, or of the law: because that for the most part, they who haue had that absolute power, haue beene such.

Of the name of king, and the administration of England.

CHAP. 9.

That which we call in one sillable king in English, the old Englishmen, and the Saxons, from whom our tongue

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tongue is deriued, so this day call in two sillables, cy-
ning, which whether it cometh of cen or ken, which be-
tokeneth to know and vnderstand, or can, which betoke-
neth to be able, or to haue power, I cannot tel. The par-
ticipple absolute of the one we vse yet, as when we say,
a cunning man, *Vir prudens, aut sciens*: the verbe of
the other, as I can do this, *possum hoc facere*. By old and
auncient hystories that I haue red, I do not vnderstand
that our nation hath vsed any other generall authoritie
in this realme neither *Aristocratical*, nor *Democratical*,
but onely the royall and kingly maiestie which at the
first was deuided into many and sundrie kings, ech ab-
solutely reigning in his Countrey, not vnder the subiec-
tion of other, till by fighting the one with the other, the
ouercommed alwayes falling to the augmentation of
the vanquisher and ouercommer: at the last the Realme
of England grew into one Monarchie. Neither any one
of those kings, neither he who first had all, toke any in-
uestiture at the hands of the Emperour of Rome, or of a-
ny other superiour or foraine Prince, but held of God
to him selfe, and by his sword, his people and crowne,
acknowledging no Prince in earth his superiour, & so
it is kept and holden at this day. Although king Iohn
(by the rebellion of the Nobilitie, ayded with the Daul-
phin of Fraunce his power) to appeale the Pope, who
at that time possessing the consciences of his Subiectes,
was then also his enemy, and his most greuous toz-
ment (as some hystories doe witnes) did resigne the
crowne to his Legate Pandulphus, and toke it againe
from him, as from the Pope, by faith and homage, and a
certaine tribute yerely. But that acte being neither ap-
proued by his people, nor established by Acte of Parle-
ment, was forthwith, & euer sithens taken for nothing,
either to binde the king, his successours or Subiects.

What

What is a Common wealth, and the partes thereof.

CHAP. 10.

TO be better vnderſtoode hereafter, it is neceſſary yet *Respublica.* to make a third diuiſion of the Common wealth by the partes thereof. A Common wealth is called a ſocietie or common doing of a multitude of free men, collected together, and vnited by common accord & couenants among themſelues, for the conſeruation of themſelues as wel in peace as in warre. For properly an hoſt of men is not called a common wealth, but abuſiuely, becauſe they are collected but for a time, and for a fact: which done, ech deuideth himſelf from others as they were before. And if one man had, as ſome of the olde Romanes had (if it be true that is written) five thouſande, or tenne thouſande bondmen whom he ruled well, though they dwelled all in one Citie, or were diſtributed into diuers villages, yet that were no common wealth: for the bondman hath no communion with his maſter, the wealth of the Lord is onely ſought for, and not the profit of the ſlaue or bondeman. For as they who write of theſe things haue defined, a bondman or ſlaue is as it were (ſauing life and humane reaſon) but the inſtrument of his Lords, as the axe, the ſawe, the cheſſell and goſſe is of the Carpenter. Trueth it is, the Carpenter looketh diligently to ſaue, correct and amend all theſe: but it is for his owne profite, and in conſideration of him ſelf, not for the inſtruments ſake. And as theſe be inſtruments of the Carpenter, ſo the plow, the cart, the horſe, ore or aſſe, be inſtruments of the husbandman: and though one husbandman had a great number of all theſe, and looked well to them, it made no common wealth, nor could not ſo be called. For the private wealth of the husband-

bandman is onelie regarded, and there is no mutual^l societie o^r po^rtion, no law o^r pleading betwene the one and the other. And (as he saith) what reason hath the pot to say to the Potter, why madest thou me thus? o^r why doest thou b^rea^k me after thou hast made me: euen so is the bondman o^r slaue which is bought fo^r money: fo^r he is but a reasonable and liuing instrument, the possession of his Lo^rd and master, reckoned among his goods, not otherwise admitted to the societie ciuill, o^r Common wealth, but is part of the possession and goods of his Lo^rd. Wherefo^re, except there be other o^rders and administrations amongst the Turkes, if the p^rince of the Turkes (as it is written of him) doe repute all other his bondmen and slaues (him selfe and his sonnes onelie fr^eemen) a man may doubt whether his administration be to be accounted a common wealth, o^r a kingdome, o^r he rather to be reputed onely as one that hath vnder him an infinite number of slaues o^r bondmen, among whom there is no right, law, no^r Commonwealth compact, but onely the will of the Lo^rd and Segnior. Surely none of the old Greekes would call this fashion of gouernment, *Remp.* o^r πολιτεία fo^r the reasons which I haue declared befo^re.

The first sort, or beginning of an house

or Familie, called οἰκονομία.

CHAP. II.

Then if this be a societie, and consisteth onely of freemen, the least part therof must be of two. The naturalest, and first coniunction of two, toward the making of a further societie of continuance, is of the husband & of the wife, after a diuers sort, each hauing care of the familie: the man to get, to trauaile & roade, to defende: the

the wife, to save that which is gotten, to tarie at home, to distribute that which commeth of the husbandes labour, for the nutriture of the children, and family of them both, and to keepe all at home neate and cleane. So nature hath forged ech part to his office: the man sterne, strong, bold, aduenturous, negligent of his beautie, and spending. The women weake, fearefull, faire, curious of her beautie, and saving. Either of them excelling other in witte and wisdom, to conduct those thinges which appertaine to their office, and therefore where their wisdom doeth excell, therein it is reason that ech should governe. And without this societie of man and woman, the kinde of man could not long endure. And to this societie men are so naturally bozne, that the Prince of all Philosophers, in consideration of natures, was not afraide to say, that a man by nature is rather desirous to fellosh himselfe to another, and so to live in couple, than to adherd himselfe with many. Although of all things, or living creatures, a man doeth shew himselfe most politike, yet can he not well live without the societie and felowship ciuill. He that can live alone, saith Aristotle, is either a wilde beast in a mans likenes, or els a god rather than a man. So in the house and family is the first and most naturall (but priuate) apparance of one of the best kindes of a common wealth, that is called Aristocratia, where a few, and the best doe governe, and where not one alwaies: but sometime, and in some thing one, and sometime and in some thing another doth beare the rule. Which to maintaine for his part, God hath geuen to the man great witte, bigger strength, and more courage, to compell the woman to obey by reason, or force: and to the woman beautie, faire countenance, and sweete words, to make the man to obey her againe for lone. Thus ech obeyeth and commandeth other, and they two together rule the house. The house I call here

Domus, few familia.

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the man, the woman, their children, their servants bond and free, their cattle, their household stuffe, and all other things which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocratia, but Metaphorice, for it is but an house, and a little sparke resembling as it were that government.

*The first and naturall beginning of a
kingdome, in Greeke βασιλεια.*

CHAP. 12.

But for so much as it is the nature of all things to encrease or decrease: this house thus increasing and multiplying by generation, so that it cannot wel be comprehended in one habitation, and the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out in couples as it were by prouining or propagation. And the childe by marriage beginneth as it were to roote towards the making of a new stocke, and thereupon another house or familie. So by this propagation or prouining first of one, and then another, and so from one to another, in space of time, of many houses was made a streete or village: of many streetes and villages ioyned together, a Citie or Borough. And when many cities, boroughs and villages, were by common and mutuall consent for their conseruation ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most naturall beginning and source of cities, townes, nations, kingdomes, and of all ciuill societies. For so long as the great grandfather was aliue and able to rule, it was vnnaturall for any of his sonnes or offspring to strue with him for the superio-

Prouining, or
propagation,
is when a man
layeth a brāch
of a Vine or
Olier, or any
other tree into
the ground, so
that it taketh
roote of it self,
and may liue
though it be
cut clean from
the first roote
or stock.
Pagus.
Oppidum.
Ciuitas.
Regnum.

periozitie, or to goe about to gouern, or any wise to dishonour him, from whom he had receiued life and being. And therefore such a one doeth beare the first and naturall example of an absolute and perfect king. For he loued them as his owne childzen and nephewes, cared for them as members of his owne body; prouided for them as one hauing by long time moze experience then any one, or all of them. They againe honoured him as their father of whose body they came, obeyed him for his great wisdom and foresight, went to him in doubtful cases as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe vled noziture: for ech paine put vpon them, he esteemed as layd vpon himselfe.

*The first and naturall beginning of the rule of a
few of the best men, called in Greeke Αἰσχροπαῖα.*

CHAP. 13.

But when that great Grandfather was dead, the sonnes of him, and brethren among themselves, not hauing that reuerence to any, nor confidence of wisdom in any one of them, nor that trust the one to the other, betwene whom (as many times it fareth with brethren) some strifes and brawlinges had before arisen: To defende themselves yet from them which were Malis and strangers, necessarilie agreed among themselves to consult in common, and to beare rule for a time in order, now one, now another: so that no one might beare alwayes the rule, nor any one be neglected. And by this meanes, if any one fayled during his yeare or time by ignorance, the next (being either wyser of himselfe, or els by his brothers erroz and fault) amended it. And in the meane while, at diuers and most times
when

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When vrgent necessitie did occurre, they consulted all those heads of families together within themselves, how to demean and order their matters best for the conseruation of themselves, and eche of their families, generally and particularly. Thus a few, being heads, and the chiefe of their families, equall in birth and nobilitie, and not much different in riches, gouerned their owne houses, and the descendents of them particularly, and consulted in common vpon publike causes, agreeing also vpon certaine lawes and orders to bee kept amongst them. So the best, chiefeest, and sageest did rule, and the other part had no cause to strine with them, nor had no cause nor apparance to compare with any of them, neither for age nor discretion, nor for riches or nobilitie. The rulers sought ech to keepe & maintaine their posteritie, as their sonnes and nephewes, and such as should succede them, and carie their names when they were dead, and so render them being mortall by nature, immortall by their fame and succession of posteritie: hauing most earnest care to maintaine still this their counsage and common familie, as well against foraine and barbarous nations, which were not of their progenie, tongue, or religion, as against wilde and sauage beastes. This seemeth the naturall source, and beginning or image of that rule of the fewer number, which is called of the Greekes *Αριστοκρατία*, and of the Latines *optimatum respublica*.

*The first originall, or beginning of the rule
of the multitude called *οχλοκρατία* or *Δημοκρατία**

CHAP. 14.

Now, as time bringeth an ende of all things, these beeth, en being all dead, and their offspring increasing

sing dayly to a great multitude, and the reverence due
 to the old fathers in such and so great number of equals
 sayling by the reason of the death or dotting of the El-
 ders: eche owing their merites of education apart to
 their Fathers and Grandfathers, and so many arising,
 and such equalitie among them, it was not possible that
 they should be content to be governed by a few. For
 two things being such as for the which men in societie
 and league doe most strive, that is, honour and profite,
 no man of free courage can be contented to be neglected
 therein, so that they were faine of necessitie to come to
 that, that the more part should beare the price away in
 election of Magistrates and Rulers. So that either by
 course or by lot ech man in turne might be received to
 beare rule, and have his part of the hono: and (if any
 were) of the profite which came by administration of
 the commonwealth. For whosoever came of that olde
 great Grandfathers race, he accounted himselfe as good
 of birth as any other. For service to the commonwelth,
 all, or such a number had done it, as they coude not bee
 accounted few. And if a few would take upon them to
 usurpe over the rest, the rest conspiring together would
 sone be masters over them, and ruinate them wholly.
 Whereupon necessarily it came to passe, that the com-
 mon wealth must turne and alter as befoze from one
 to a few, so now from a few, to many and the most part,
 ech of these yet willing to save the politicke bodie, to
 conserve the authoritie of their nation, to defend them-
 selves against all other, their strife being onely for
 empire and rule, and who should doe best for the com-
 mon wealth, whereof they would have experience made
 by bearing office and being magistrates. This I take
 for the first and naturall beginning of the rule of the
 multitude which the Grækes called *δημοκρατία*: the La-
 tines some *Respublica* by the generall name, some po-

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puli potestas, some census potestas, I cannot tell howe latinely.

That the common Wealth or policie must be according to the nature of the people.

CHAP. 15.

By this proceſſe and diſcourſe it doth appeare that the mutations & changes of faſhions of gouernement in common wealthes be naturall, & doe not alwaies come of ambitioⁿ or malice: And that according to the nature of the people, ſo the cōmon wealth is to it fit and proper. And as all theſe iii. kindes of common wealths are naturall, ſo when to ech partie or eſpece and kinde of the people that is applied which beſt agreeth, like a garinēt to the bodie or ſhoe to the foote, then the bodie politicke is in quiet, & findeth eaſe, pleaſure and proſſite. But if a contrarie forme be giuen to a cōtrary maner of people, as when the ſhoe is too litle or too greate for the foote, it doth hurt and encomber the conuenient uſe therof, ſo the free people of nature tyzannized or ruled by one againſt their willes, were he neuer ſo good, either ſaile of corage and were ſeruile, or neuer reſt vntil they either deſtroy their King and them that would ſubdue them, or be deſtroyed themſelues. And againe, another ſort there is, which without being ruled by one Prince, but ſet at libertie cannot tell what they ſhould doe, but either through inſolencie, pride, and idlenes, will fall to roberie and all miſchiefe, and to ſcatter and diſſolue themſelues, or with ſoliſh ambition and priuate ſtriſe conſume one another, and bring themſelues to nothing. Of both theſe two wee haue hiſtozies inow to beare witneſſe, as the Grækes, Romanes, Samnites, Danes, Wandalles, and others. Yet muſt you not thinke that all
common

Græci.
Romani
Samnits.
Vandali.
Dani.
Norwegi.
Sucti.

common wealths, administrations and rulings, began on this sort, by prouining or propagation, as is before written: but many times after a great battaile and long warre, the Captaine who led a multitude of people, gathered peradventure of diuers nations and languages, liking the place which he hath by force conquered, tarieth there, and beginneth a common wealth after this maner, & for the most part a kingdome. As the Gothes & Lombardes in Italie, the Frenchmen in Gaule, the Saracens in Spaine and part of France, the Saxons in great Brittain, which is now called England: of which, when that one and chiefe Prince is dead, the nobler sort consult among themselves, and either chouse another head & king, or deuide it into more heads and rulers, so did the Lombards in Italie, and the Saxons in England: or take at the first a common rule and popular estate, as the Zwitchers did in their cantons, and doe yet at this day, or els admit the rule of a certaine few, excluding the multitude and communaltie, as the Paduans, Veronenses, and Venetians haue accustomed.

*The diuision of the partes and persons
of the Commonwealth.*

CHAP. 16.

TO make all things yet cleare before, as we shal goe, there aryseth another diuision of the partes of the common wealth. For it is not enough to say that it consisteth of a multitude of houses & families, which make strætes & villages, and the multitude of the strætes and villages make towne, and the multitude of towne the realm, & that freemen be considered only in this behalfe, as subiects and citizens of the commonwealth, and not bondmen, who can beare no rule nor iurisdiction ouer

freemen, as they who be taken but as instruments & the goods and possessions of others. In which consideration also we doe reiect women, as those whom nature hath made to keepe home and to nourish their familie & children, and not to meddle with matters abroade, nor to beare office in a citie or common-wealth no more than children and infants: except it be in such cases as the authoritie is annexed to the blood and progenie, as the crowne, a dutchie, or an erledome; for there the blood is respected, not the age nor the sexe. Whereby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being married to a king, duke, or erle, but by being the true, right and next successors in the dignitie, and upon whom by right of the blood that title is descended: These I say haue the same authoritie although they be women or children in that kingdome, dutchie or erledome, as they should haue had if they had bin men of full age. For the right and honour of the blood, and the quietnes and suertie of the realme, is more to be considered, than either the tender age as yet impotent to rule, or the sexe not accustomed (other wise) to intermeddle with publicke affaires, being by common intendment vnderstood, that such personages neuer doe lacke the counsell of such graue and discrete men as be able to supplie all other defectes. This (as I saide) is not enough: But the diuision of these which be participant of the common-wealth is one way of them that beare office, the other of them that beare none: the first are called magistrates, the second priuate men. Another the like was among the Romanes of *patritij* and *plebei*, the one striving with the other a long time, the *patritij* many yeeres excluding the *plebei* from bearing rule, vntill at last all magistrates were made comon betweene them: yet was there another diuision of the Romanes, into *senatores*, *equites* and *plebs*:

plebs: the Grekes had also *ἰσχυρὸν καὶ ἀσχυρὸν*. The French have also at this day, les nobles, & la populaire, or gentils homes & villanies: we in, England diuide our men commonly into foure sortes, Gentlemen, Citizens, yeomen, artificers, and labourers. Of gentlemen the first and chiefe are the king, the prince, dukes, marquises, earles, vicountes, barrens, and these are called *αὐτὸκράτωρ* the nobilitie, and all these are called Lords and noblemen: next to these be knights, esquires and simple gentlemen.

Of the first part of Gentlemen of England,

called Nobilitas maior.

CHAP. 17.

Dukes, marquises, earles, vicounts, and barons, either be created by the Prince, or come to that hono^r by being the eldest sonnes, as highest and next in succession to their Parents. For the eldest of Dukes sonnes during his fathers life is called an Earle: an Earles sonne is called by the name of a Vicount or Baron, or els according as the creation is. The creation I call the first donation and condition of the honour (geuen by the Prince for good seruice done by him, and aduauncement that the Prince will bestow vpon him) which with the title of that hono^r is commonly (but not alwayes) geuen to him and to his heires, males onely: the rest of the sonnes of the Nobilitie, by the rigour of the lawe be but Esquires, yet in common speeche, all Dukes and Marquises sonnes, and the eldest sonne of an Earle be called Lords. The which name commonlie doeth agree to none of lower degree than Barons, excepting such onely, as be thereunto by some speciall office called. The Barony or degree of Lords doeth

Nobilitas maior.

Eldest sonnes of dukes are not earles by birth, but lords and take their place aboue earles; and so are earles eldest sonnes in respect of barons.

Esquires of honor, or Lords.

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answere to the dignitie of the Senators of Rome, and the title of our Nobilitie to their *patricii*: when *patricii* did betoken *Senatores*, and *Senatorum filios*. Censurum was in Rome, at diuers times diuers, and in England no man is created a Baron, except he may dispend of yerely reuenue one thousand pounds, or one thousand markes at the least. Vicounts, Earles, Marquises and Dukes moze, according to the proportion of the degree & honour, but though by chance he or his sonne haue lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted the vpper house in the Parliament, although they keepe the name of Lord still.

Of the second sort of Gentlemen, which may be called Nobilitas minor, and first of Knights.

CHAP. 18.

NO man is a knight by succession, not the King or prince. And the name of prince in England *κατ' ἐξοχὴν* betokeneth the kinges eldest sonne or prince of Wales: although the King himselfe, his eldest sonne, and all Dukes be called by generall name Princes. But as in Fraunce the kinges eldest sonne hath the title of the Dauphine, and he, or the next heire apparant to the Crowne is Monsieur, so in England the kinges eldest sonne is called *κατ' ἐξοχὴν* the Prince. Knights therefore be not borne but made, either before the battaile to encourage them the moze to aduenture their liues, or after the conflict, as aduancement for their hartinesse and manhode already shewed: or out of the warre for some great seruice done, or some good hope through the vertues which doe appeare in them. And they are made
either

either by the king himselſe, or by his commiſſion and royall authoritie geuen for the ſame purpoſe, or by his Lieutenant in the warres, who hath his royall and abſolute power committed to him for that time. And that order ſeemeth to anſwere in part to that which the Romans called *Equites Romanos*, differing in ſome pointes, and agreeing in other, as their common wealth and ours doe differ and agree: for neuer in all points one common wealth doeth agree with another, no nor long time any one common wealth with it ſelfe. For all changeth continually to more or leſſe, and ſtill to diuers and diuers orders, as the diuerſitie of times doe preſent occaſion, & the inutabilitie of mens wittes doeth inuent and aſſaye new wayes, to reſorme and amend that wherein they doe finde fault. *Equites Romani*, were choſen *ex cenſu*, that is, according to their ſubſtaunce and riches. So bee knights in England moſt commonly, according to the perely reuenue of their landes, being able to maintaine that eſtate: yet all they that had *Equeſtrem cenſum*, *non legebantur Equites*. No more are all made knights in Englande that may diſpende a knights land or fee, but they onely whom the king will ſo honour. The number of *Equites* was vncertaine, and ſo it is of knights, at the pleaſure of the Prince. *Equites Romani* had *equum publicum*. The knights of England haue not ſo, but finde their owne horſe themſelues in peace time, and moſt uſually in warres.

Cenſus Equeſter was among the Romans at diuers times of diuers value: but in England whoſoeuer may diſpende of his free landes forty poundes ſterling of perely reuenue, by an olde lawe of England, either at the coronation of the king, or marriage of his daughter, or at the dubbing of the Prince knight, or ſome ſuch great occaſion, may be by the king compelled to take that order and honoꝝ, or to pay a fine, which many not

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so desirous of honour as of riches, had rather disburse. Some, who for causes are not thought worthe of that honour and yet haue abilitie, neither be made knightes, though they would, and yet pay the fine of xl. l. sterling, at that time when this order began, which maketh new Exp. of currant money of England: as I haue more at large declared in my booke of the diuersitie of Standards, or the valor of monies.

When the Romanes did write *Senatus populusque Romanus*, they seemed to make but two orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained Equites and plebem: so when we in England doe say the Lords and the Commons: the knights, esquires, and other gentlemē, with citizens, burgeses and yomen, be accounted to make the Commons, In ordaining of lawes, the Senat of Lords of England is one house, where the Archbishops and Bishops also be, and the King or Quene for the time being as chiefe, the knights and all the rest of the Gentlemen, Citizens and Burgeses which be admitted to consult vpon the greatestt affaires of the Realme, be in another house by themselves, and that is called y house of the Commons, as wee shall more clearly describe when we speake of the Parlement. Whereupon this word knight is deriued, and whether it doe betoken no more but that which miles doeth in latine, which is a Souldier, might be mooued as a question. The worde Souldier now seemeth rather to come of sould & painēt, and more to betoken a waged or hired man to fight, than otherwise, yet Caesar in his commentaries called soldures in the tongue gallois, men who deuoted & swore themselves in a certaine band or oath one to another, and so the Captaine: which order if the Almains did follow, it may be that they who were not hyred, but being of the Nation, vpon their owne charges, and for their ad-
uance-

auancement, and by such common oath or band that did
 follow the wars, were (possibly) ^{κατ' ἐξουσίαν} called knights
 or milites, and now among the Almaines some are cal-
 led Lanceknights, as souldiers of their band not hyzed,
 although at this day they be for the most part hirelings.
 And peradventure it may be that they which were next
 about the Prince, as his garde and seruants, picked or
 chosen men out of the rest, being called in the Almaine
 language knighten, which is as much to say as seruants:
 these men being found of good seruice, the worde after-
 ward was taken for an honoꝝ, and for him who maketh
 profession of armes. Our language is so changed, that I
 dare make no iudgement thereof. Now wee call him
 knight in English, that the French calleth cheualier,
 and the Latine *equitem*, or *equestris ordinis*.

And when any man is made a knight, he kneeling
 downe is stroken of the Prince, with his sword naked,
 vpon the back or shoulder, the Prince saying, sus or sois
 chualier au nom de Dieu, and (in times past) they ad-
 ded S, George, & at his arising the Prince saith, auan-
 cer. This is the maner of dubbing of knightes at this
 present: and that terme dubbing, was the olde terme in
 this point, & not creation. At the coronation of a king or
 Quene, there be knights of the bath made, with long &
 moze curious ceremonies. Knights bannerets are made
 in the field, with the ceremonie of cutting off the poynt
 of his standert, and making it as it were a baner: he be-
 ing before a bachelor knight, is now of a greater degree,
 allowed to display his armes in a baner as Barons do.
 But this order is almost growen out of vse in England.
 But how soeuer one be dubbed or made a knight, his
 wife is by and by called a Lady, as well as a Barons
 wife: he himselfe is not called Lord, but hath to his
 name in common appellation added this syllable, Sir, as
 if he before were named Thomas, William, Iohn or Ri-
 chard,

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chard, afterward he is alwaies called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men giue to Knightes in Englande. This may suffice at this time, to declare the order of knight-hood, yet there is an other order of knights in England which be called the knights of the Garter. King Edward the third, after he had obtained many notable victories, King Iohn of Fraunce, King Iames of Scotland, being both prisoners in the tower of London at one time, and king Henrie of Castel the bastard expelled out of his realme, and Don Petro restored vnto it by the prince of Wales and Duke of Aquitaine called the blacke prince, inuented a societie of honour, and made a choise out of his owne realme and dominions, and all Christendome: and the best and most excellent renoumed persons in vertues and honour, he did adorne with that title to be knights of his order, gaue them a garter decked with golde, pearle and precious stones, with the buckle of gold, to weare daily on the left legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall apparell both of stufte and fashion exquisite and heroicall, to weare at high feasts, as to so high and princely an order was mete: of which order he and his successors Kinges and Quænes of England to be the soueraigne, and the rest by certaine statutes and lawes among themselves, be taken as brethren and fellows in that order, to the number of xxvi. But because this is rather an ornament of the realme than any policie or gouernment thereof, I leaue to speake any further of it.

Of Esquiers.

CHAP. 19.

Escuier or esquier (which we call commonly squire) is a French worde, and betokeneth *Scutigerum* or *Armigerum*

Armigerum, and be all those which beare armes (as we call them) or armories (as they terme them in French) which to beare is a testimonie of the nobilitie or race from whence they doe come. These be taken for no distinct order of the Commonwealth, but do goe with the residue of the Gentlemen: saue that (as I take it) they be those who beare armes, testimonies (as I haue saide) of their race, and therefore haue neither creation nor dubbing: or els they were at the first costerels or the bearers of the armes of Lordes or Knights, and by that had their name for a dignitie and honour giuen to distinguish them from a common Souldier called in Latine *Gregarins miles*.

Of Gentlemen.

CHAP. 20.

Gentlemen be those whom their bloud and race doeth make noble and knownen, *Εὐγενής* in Greeke, the Latines call them all *Nobiles*, as the French Nobles, *Εὐγενία* or *Nobilitas* in Latine is defined, honour or title geuen, for that the ancestoz hath bene notable in riches or vertues, or (in fewer words) olde riches or pzowes remayning in one stock. Which if the successozs do keep and followe, they be verè *nobiles*, and *Εὐγενής*: if they doe not, yet the same and wealth of their ancestozs serue to cover the so long as it can, as a thing once gilted though it be copper within, till the gilt be woꝛne away. This hath his reason, for the Etimologie of the name serued the efficacie of the woꝛde. *Gens* in Latine betokeneth the race and surname, so the Romanes had Cornelios, Sergios, Appios, Fabios, Armilios, Pifones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name, were also Gentiles: and remayning the

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memorie of the glorie of their progenitors fame, were Gentlemen of that or that race. This matter made a great strife among the Romanes, when those which were noui homines, were more allowed, for their vertues new and newly shewen, than the old smell of auncient race newly defaced by the cowardise and euill life of their nephewes and discendants coulde make the other to be. Thus the Cicerones, Catones, and Marij had much a doe with those auncients, and therfore said Iuuenalis:

Malo pater tibi sit Therfites, dummodo tu sis
 Aeacidi similis vulcaniaque arma capeffas,

Quám te Therfiti similem producat Achilles.

But as other Common wealths were faine to doe, so must all Princes necessarilie follow: that is, where vertue is, to honour it. And although vertue of auncient race be easier to be obtained, as well by the example of the progenitors, which encourageth, as also thzough habilitie of education and bzinging vp, which enableth, and the lastly enraced loue of tenants and neighbors to such noblemen and Gentlemen, of whom they hold, and by whom they doe dwell, which pricketh forwarde to ensue in their fathers steps. So if all this do faile (as it were great pitie it shoulde) yet such is the nature of all humaine things, and so the world is subiect to mutabilitie, that it doeth many times faile: but when it doeth, the prince and commonwealth haue the same power that their predecessors had, and as the husbandman hath to plant a new tree where the old fayleth, so hath the Prince to honour vertue where he doeth sinze it, to make gentlemen, esquires, knights, barons, earles, marquises and dukes, where he seeth vertue able to beare that honoz or merits, and deserues it, and so it hath alwayes been vsed among vs. But ordinarilie the k. doth onely make knights, & create barons, or higher degrees:

for as for gentlemen, they be made goodcheape in England. For who soever studieth the lawes of the realme, who studieth in the Universities, who professeth liberrall Sciences: and to be short, who can live idly, and without manuell labour, and will beare the port, charge and countenance of a Gentleman, hee shall be called master, for that is the title which men geue to esquires and other gentlemen, and shall be taken for a Gentleman. For true it is with vs as is said, *Tanti eris alius, quanti tibi feceris*: And (if neede be) a king of Herauldes shall also geue him for money armes newly made and inuented, the title whereof shall pretende to haue bene found by the sayd Herauld in perusing and betwing of olde Registers, where his Ancestors in times past had been recordeed to beare the same. Or if he will doe it moze truely, and of better faith, he will write that for the merites of that man, and certaine qualities which he doeth see in him, and for sundrie noble actes which he hath perfourmed, he by the authoritie which he hath, as king of Heraulds and armes, geueth to him his heires these and these armes, which being done, I thinke hee may be called a Squire, for he beareth euer after those armes. Such men are called sometime in scoone, gentlemen of the first head.

Whether the maner of England in making Gentlemen so easilie, is to be allowed.

CHAP. 21.

A Man may make doubt & question, whether this maner of making gentlemen is to be allowed or no, & for my part I am of that opinion that it is not amisse. For first the prince loseth nothing by it, as he should doe if it were as in France: for the yeoman or husbandman

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is no more subiect to taile or tare in England than the gentleman: no, in every payment to the King the gentleman is more charged, which he beareth the gladlier, and dareth not gaineſay, for to ſaue and keepe his honour and reputation. In any ſheue or muſter, or other particular charge of the towne where he is, he muſt open his purſe wyder, and augment his portion aboue others, or els he doeth diminith his reputation. As for their outward ſheue, a gentleman (if he wil be ſo accounted) muſt goe like a gentleman, a yeoman like a yeoman, and a rascal like a rascal: and if he be called to the warres, he muſt and will (what ſoeuer it coſt him) array himſelfe, and arme him according to the vocation which he pretendeth: he muſt ſheue alſo a more manly courage, and tokens of better education, higher ſtomacke, and bountifuller liberalitie than others, and keepe about him idle ſeruaunts, who ſhall doe nothing but wayte vpon him. So that no man hath hurt by it but he himſelfe, who hereby perchance will beare a bigger ſayle than he is able to maintaine. For as touching the policie and government of the Commonwelth it is not thoſe that haue to doe with it which will magnifie themſelues, and goe in higher buſkins than their eſtate will beare: but they which are to be appointed, are perſons tried and well known, as ſhall be declared hereafter.

Of Citizens and Burgeſſes.

CHAP. 22.

NExt Gentlemen be appointed Citizens and Burgeſſes, ſuch as not onely be free, and receiued as officers within the Cities, but alſo be of ſome ſubſtance to beare the charges. But theſe Citizens and Burgeſſes, be to

be to serue the common wealth, in their cities and bur-
rowes, or in corporate towne where they dwel. Gene-
rally in the shires they be of none account, saue onely in
the common assembly of the Realme to make lawes,
which is called the Parliament. The ancient cities ap-
point four, and ech borow two, to haue voices in it, and
to geue their consent or dissent, in the name of the citie
or borough for which they be appointed.

Of Yeomen.

CHAP. 23.

Those whom we call yeomen, next vnto the nobilitie,
knights and Squires, haue the greatest charge and
doings in the common wealth, or rather are more tra-
uayled to serue in it than all the rest: as shall appeare
hereafter. I call him a yeoman whom oure lawes doe
call *Legalem hominem*, a word familiar in writtes and
enquestes, which is a freeman borne English, and may
dispende of his owne free land in yerely reuenue to the
summe of xl. s. sterling. This maketh (if the iust va-
lue were taken now to the proportion of monies) vi. l.
of our currant money at this present. This sort of peo-
ple confesse themselves to be no gentlemen, but geue
the honoz to all which be or take vpon them to be Gen-
tlemen, and yet they haue a certaine preheminance and
more estimation than labourers and artificers, and com-
monly liue wealthily, keepe good houses, and doe their bu-
sines, & trauaile to acquire riches: these be (for the most
part) farmours vnto gentlemen, which with grasing, fre-
quenting of markettes and keeping seruants not i-
dle as the gentleman doth, but such as get both their
own liuing and part of their maisters, and by these
meanes do come to such wealth, that they are able
and daily do buy the landes of vntowardie gentlemen,
and

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and after setting their sonnes to the schoole at the Uni-
 uersities, to the lawes of the Realme, or other wise lea-
 uing them sufficient landes whereon they may liue
 without labour, doe make their said sonnes by those
 meanes Gentlemen. These be not called masters, for
 that (as I said) pertaineth to Gentlemen onely. But to
 their surnames men adde Goodman: as if the surname
 be Luter, Finch, White, Browne, they are called good-
 man Luter, goodman White, goodman Finch, goodman
 Browne, amongst their neighbors, I meane not in mat-
 ters of importance, or in lawe. But in matters of lawe
 and for distinctiō, if one were a knight, they would write
 him (for example sake) Sir Iohn Finch knight, so if he
 be an Esquire, Iohn Finch Esquire or Gentleman, if
 he be no Gentleman, Iohn Finch yeoman. For amongst
 the Gentlemen they which claime no higher degree, and
 yet be to be exempted out of the number of the lowest
 sort thereof, be written Esquires. So amongst the hus-
 bandmen, labourers, lowest and rascall sorte of the peo-
 ple, such as be exempted out of the number of the ras-
 cabilitie of the popular be called and written yeomen,
 as in the degree next vnto Gentlemen. These are they
 which old Cato calleth *Aratores*, and *optimos ciues in Re-*
publica, and such as of whom the writers of common-
 wealths praise to haue many in it. Aristoteles namely
 reciteth *ποσειδημονικα*; these tende their owne businesse,
 come not to meddle in publike matters and iudgements
 but when they are called, and glad when they are deli-
 uered thereof, are obedient to the gentlemen and rulers,
 and in warre can abide trauaile and labor, as men vsed
 to fight for their Lords of whom they hold their landes,
 for their wiues and children, for their countrey and na-
 tion, for prayse and honour against they come home,
 and to haue the loue of their Lorde and his children, to
 bee continued towards them and their children, which
 haue

haue aduentured their liues to and with him and his . These are they which in the olde world gat that honour to Englande , not that either for witte , conduction , or for power they are or were euer to be compared to the gentlemen , but because they be so manie in number , so obedient at the Lordes call , so strong of bodie , so harde to endure paine , so couragious to aduenture with their Lord or Captaine going with , or before them , for else they be not hastie nor neuer were , as making no profession of knowledge of warre . These were the good archers in times past , and the stable troupe of footemen that affraide all France , that would rather die all , than once abandon the knight or gentleman their captaine , who at those daies commonly was their Lord , and whose tenautes they were , readie (besides perpetuall shame) to be in danger of vndoing of themselves , & all theirs if they should shew anylinge of cowardise or abandon the Lord , knight or Gentleman of whom they helde their liuing . And this they haue amongst them from their forefathers tolde one to an other . The gentlemen of Fraunce and the yeomen of England are renowned , because in battle of horsemen Fraunce was many times too good for vs , as we againe alway for them on foote . And Gentlemen for the most part be men at armes and horsemen , and yeomen commonly on foote : howsoeuer it was , yet the gentlemen had alwaies the conduction of the yeomen , and as their captaines were eyther a foote or vpon a litle nagge with them , and the Kinges of Englande in foughten battles remaining alwaies among the footemen , as the Frenche Kinges among their horsemen . Eche Prince therby , as a man may gesse , did shew where he thought his strength did consist . What a yeoman is I haue declared , but from whence the word is deriued it is hard to say : it cannot be thought that yeoman should be said

F

a young

German in the Saxon is a married man , and hereof cometh our yeoman , for

after marriage
men are ac-
counted settled
members in
the common
wealth, but not
before.

A yonker cō-
meth of yong
heire which is
a son & heire
to a gentlemā
or a young
gentleman.

a young man, for commonly we doe not call any a yeoman till he be married, and haue children, and as it were, haue some authoritie among his neighbours. Yonker in low Dutch betokeneth a meane gentleman, or a gay fellow. Possible our yeomen not being so bolde as to name themselves gentlemen, when they came home, were content when they had heard by frequentation w low Dutchmen, of some small Gentleman (but yet that would be counted so) to be called amongst them, yonker man, they calling so in warres by mockage or in sport the one an other, when they came home, yonker man, and so yeoman: which worde nowe signifyeth among vs, a man well at ease, and hauing honestly to liue, and yet not a Gentleman; whatsoever that word yonker man, yonke man, or yeoman doeth more or lesse signifie to the Dutchmen.

*Of the fourth sorte of men which
doe not rule.*

CHAP. 21.

The fourth sorte or classe amongst vs, is of those which the olde Romanes called *capite censu proletary* or *opera*, day labourers, poore husbandmen, yea merchants, or retaylers which haue no free lande, copiholders, and all Artificers, as Taylers, Shoemakers, Carpenters, Brickmakers, Bricklayers, Masons, &c. These haue no voyce nor authoritie in our Commonwealth, and no account is made of them but onely to be ruled, not to rule other, and yet they bee not altogether neglected. For in Cities and corporate townes for default of yeomen, enquestes and Iuries are impaneled of such manner of people. And in Villages they be commonly made Churchwardens, Alecunners, and
many

many times Constables, which office toucheth more the Commonwealth, and at the first was not imployed vpon such lowe and base persons. Wherefore generally to speake of the Common wealth, or policie of England, it is gouerned, administred, and manured by three sortes of persons, the Prince, Monarch, and head Gouverner, which is called the King, or if the crown fall to a woman, the Quene absolute, as I haue heeretofore said: In whose name and by whose authoritie al things are administred. The gentlemen, which be diuided into two partes, the Baronie or estate of Lozdes conteyning barons and all that be aboue the degre of a baron, (as I haue declared befoze:) and those which be no Lozds, as knights, Esquires, and simply Gentlemen.

The thirde and last sorte of persons is named the yeomanrie: Each of these hath his part and administration in iudgements, corrections of defaults, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appeare hereafter.

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THE

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THE SECOND
BOOKE.

*The diuision and definition of the Lawes of this
 Realme in generall.*

CHAP. I.

The lawes of Eng- } Judgement
 land consist in two } and
 poyntes. } Practise.

In Judgemēt are } Persons.
 considered the } Place.
 } Matter, and
 } Maner.

The persons in iudge- } Judges in their courts.
 ment are the } Sergeantes and Counsellors.

In practise are considered the } Persons,
 } and their
 } Office.

The persons are } Protonotharies.
 } Solicitors, and
 } Atturneyes.

Their office is to prepare the matter, and to make it
 readie for the Judges to determine.

The Protonotharies are the Clerkes in the Court
 which do record the matters hanging in iudgement, and
 do frame the pleading, enter the rules and orders of the
 Court, the verdictes and iudgementes giuen in the
 same.

Solicitors are such, as being learned in the lawes,
 and

and informed of their masters cause, doe informe and instruct the Counsellors in the same.

Attorneys are such as by experience haue learned, and doe know the orders and maner of proceeding in every Court where they serue, & doe purchase out writs and proceſſe belonging to their Clients cause. They see to his suits, that he be not hindered by negligence. They pay the fees belonging to the Courts, and prepare the cause for iudgement.

The places for iudgement are the courts where sentence is geuen, and the Lawes made: as, the Parlemēt, Chancerie, Kings bench, the Common-pleas, the Exchequer, the court of Wardes, the Star-chamber, the Court of Requestes, and the Duchie Court of Lancaster.

The matter of the Lawe is { Justice.
and
Equitie.

The maner of their severall proceedings, followeth.

Of the Parlement, and the authoritie thereof.

CHAP. 2.

THe most high and absolute power of the Realme of England consisteth in the Parlement. For as in warre, where the king himselſe in person, the Nobility, the rest of the gentilitie, and the yeomanrie are, is the force and power of England: So in peace and consultation where the Prince is to geue life, and the last and highest commandement, the Barronrie for the Nobilitie and higher: the Knightes, Esquires, Gentlemen and Commons for the lower part of the commonwealth, the Bishops for the Cleargie be present to aduertise,

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consult and shew what is good and necessarie for the Common wealth, and to consult together, and vpon mature deliberation, euery bill or law being thise read and disputed vpon in either house, the other two parts first ech a part, and after the Prince himselte in pzeence of both the parties, doth consent vnto and alloweth. That is the Princes and whole Realmes deede: whereupon insly no man can complaine, but must accommodate himselte to finde it good, and obey it.

That which is done by this consent is called firme, stable and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, geueth order for things past, and for thinges hereafter to bee followed, changeth rightes and possessions of priuate men, legitimateth bastardes, establissheth formes of Religion, altereth waighes and measures, geueth formes of succession to the Crowne, defineth of doubtful rights, wherof is no law already made, appointeth subsidies, tailles, taxes, and impositiōs, geueth most free pardons and absolutions, restoreth in bloud and name, as the highest Court, condemneth or absolue them whom the Prince will put to triall. And to be short, all that euer the people of England might doe, either in *Centuriatis comitis*, or *tributis*, the same may be done by the Parliament of England, which representeth, and hath the power of the whole Realme, both the head and the bodie. For euery Englishman is intended to be there pzeent, either in person, or by procuratiō and atturney, of what pzebeminence, state, dignitie, or qualitie soeuer hee bee, from the Prince (be he king or Queene) to the lowest person of England. And the consent of the Parliament is taken to be euery mans consent.

The Judges in Parliament are the kinges Maiestie, the Lordes temporall and spirituall, the Commons represented by the Knightes and Burgeses of eue

Alias Tribuni-
tis.

of euery Shire and Borough Towne. These all, or the greater part of them, and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The officers in Parlement are the Speakers, two Clarkes, the one for the higher house, the other for the lower, and the Committies.

The Speaker is he that doeth commend and prefer the billes exhibited into the Parlement, and is y^e mouth of the Parlement. He is commonly appointed by the King or Quene, though accepted by the assent of the house.

The Clarkes are the keepers of the Parlement Rolles and Records, and of the Statutes made, & haue the custodie of the private Statutes not printed.

The Committies are such as either the Lordes in the higher house, or Burgeses in the lower house, doe chosse to frame the Lawes vpon such billes as are agreed vpon, and afterward to be ratified by the sayde houses.

The forme of holding the Parlement.

CHAP. 3.

The Prince sendeth forth his rescripts or writtes to euery duke, marques, baron, and euery other Lorde temporall or spirituall who hath voyce in the Parlement, to be at his great counsell of Parlement such a day (the space from the date of the writte is commonlie at the least forty dayes;) he sendeth also writtes to the Sherifes

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Sherifes of euery shire, to admonish the whole shire to chouse two knights of the Parlement in the name of the shire, to heare and reason, and to geue their aduise and consent in the name of the Shire, and to bee p̄sent at that day: likewise to euery citie and towne, which of auncientie hath bene wont to find burgeses of the parlement, so to make election, that they might be p̄sent there at the first day of the Parlement. The Knights of the shire be chosen by all the Gentlemen and yeomen of the shire, p̄sent at the day assigned for the election: the voyce of any absent can be counted for none. *Peomē* I call here (as befoze) that may dispende at the least xl.s. of yerely rent of free lande of his owne. These meeting at one day, the two who haue the more of their voyces be chosen knights of the shire for that Parlement: likewise by the pluralitie of the voyces of the citizens and burgeses, be the burgeses elected. The first day of the Parlement the Prince and all the Lordes in their robes of Parlement doe meet in the higher house, where, after prayers made, they that be p̄sent are w̄ritten, and they that be absent upon sickness, or some other reasonable cause (which the Prince will allowe) doe constitute vnder their hand and seale some one of those who be p̄sent, as their procurer, or atturney, to geue voice for them, so that by p̄sence or atturney and p̄roxy they be all there, all the princes and Barons, and all Archbishops and bishops, and (when Abbots were) so many abbots as had voice in Parlement. The place where the assemblie is, is richly taped and hanged, a princely and royal throne as appertaineth to a king, set in the middelt of the higher place thereof. Next vnder the prince sitteth the Chancelloz, who is the voice and Oratoz of the Prince. On the one side of that house or chamber sitteth the archbishops and byshops, ech in his ranke, on the other side the dukes and barons. In the
middelt

middest thereof vpon woolsackes sitteth the Judges of the realme, the maister of the roules, and the secretaries of estate. But these that sit on the woolsackes haue no voice in the house, but onely sit there to answere their knowledge in the law, when they be asked, if any doubt arise among the Lozdes, The secretaries do answere of such letters or thinges passed in counsell, whereof they haue the custodie and knowledge: and this is called the vpper house, whose consent and dissent is giuen by ech man seuerally and by himselfe, first for himselfe, and then seuerally for so many as hee hath letters and pzoxies, when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane time the knights of the shires and burgeses of the parliament (for so they are called that haue voice in parliamēt, and are chosen as I haue said before, to the number betwixt iij. C. and iij. C.) are called by such as it pleaseth the Prince to appoint, into an other great house or Chamber by name, to which they answere: and declaring for what shire or towne they answere then they are willed to chosse an able and discreeteman to be as it were the mouth of them al, and to speake for and in the name of them, and to present him so chosen by them to the Prince: which done they comming all with him to a barre, which is at the nether end of the vpper house, there he first praiseth the Prince, then maketh his excuse of vnabilitie, and prayeth the Prince that he would commaund the commons to chosse another. The Chancelloz in the Princes name doth so much declare him able, as hee did declare himselfe vnable, and thanketh the commons for choosing so wise, discrete and eloquent a man, and willet them to goe and consult of lawes for the cōmon wealth. When the speaker maketh certaine requests to the Prince in the name of the commons, first that his maiestie would be content

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that

that they may vse and enioy all their liberties and priuiledges that the common house was wont to enioy.

Secondly that they might franchly and freely say their mindes in disputing of such matters as may come in question, and that without offence to his Maiestie.

Thirldy that if any should chaunce of that lower house to offend, or not to do or say as should become him, or if any should offend any of them being called to that his highnes court, that they thēselues might (according to the ancient custome) haue the punishment of them. And fourthly, that if there came any doubt, wherupon they shall desire to haue the aduise or cōference with his Maiestie or with any of the Lordes, that they might do it: all which he promiseth in the Commons names, that they shall not abuse, but haue such regarde as most faithful, true and louing subiectes ought to haue to their Prince.

The Chaunceloz answereth in the Princes name, as apperteineth. And this is all that is done for one day, & sometime two. Besides the Chaunceloz, there is one in the vpper house who is called Clarke of the Parliament, who readeth the billes. For all that cometh in consultation either in the vpper house or in the neather house, is put in wꝛiting first in paper, which being once read, he that will, riseth vp and speaketh with it or against it: and so one after another so long as they shall thinke good. That done they go to another, and so another bill. After it hath bin once or twice read, and doth appeare that it is somewhat liked as reasonable, with such amendment in woꝛdes and peraduenture some sentences as by disputation seemeth to be amended: in the vpper house the Chaunceloz asketh if they will haue it ingrossed, that is to say, put into parchment: which done, and read the third time, and that eftsones if any be disposed to obiect disputed againe among them,
the

the Chaunceloz asketh if they will go to the question: and if they agree to go the question, then he saith, here is such a law or act concerning such a matter, which hath bin thise read here in this house, are yee content that it be enacted or no? If the not contentes be moe, then the bill is dashed, that is to say the law is annihilated, and goeth no further. If the contentes be y moe, then the Clarke writeth underneath: Soit baille aux commons. And so when they see time, they send such billes as they haue approued by two or thre of those which do sit on the woolsackes to the commons: who asking licence, and comuning into the house, with due reuerence, saith to the speaker: Maister speaker, my Lordes of the vpper house haue passed among them and thinke good, that there should be enacted by Parliament such an act, and such an act, and so readeth the titles of that act or actes. They pray you to consider of them, and shew them your aduise, which done they goe their way. They being gone, and the doze againe shut, the speaker rehearseth to the house what they said. And if they bee not busie disputing at that time in an other bill, hee asketh them streight way if they will haue that bill or (if there be moe) one of them.

In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see and be scene of them all, hath befoze him in a lower seate his Clarke, who readeth such billes as be first propounded in the lower house, or be sent downe from the Lords. For in that point ech house hath equall authoritie, to propound what they thinke meete, either for the abrogating of some lawe made befoze, or for making of a newe. All billes be thise in thre diuerse daies read and disputed vpon, befoze they come to the question. In the disputing is a maruelous good order vled in the lower House. Hee that standeth vp

bareheaded is vnderstanded that he will speake to the bill. If mo stand vp, who that first is indged to arise, is first heard, though the one do praise the law, the other disswade it, yet there is no alteration. For euery man speaketh as to the speaker, not as one to another, for that is against the order of the house. It is also taken against the order, to name him whom yee do confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill, and gaue this and this reason. And so with perpetual Oration not with altercation, he goeth through till he do make an end. He that once hath spoken in a bil, though he be confuted straight, that day may not reply, no though he would change his opinion. So that to one bill in one day one may not in that house speake twise, for else one or two with altercation would spende all the time. The next day he may, but then also but once.

No reuiling or nipping wordes must be vsed. For then all the house will crie, it is against the order: and if any speake vnreuerently or seditiously against the Prince or the priue Counsell, I haue scene them not snelly interrupted, but it hath bin moued after to the house, and they haue sent them to the Tower. So that in such a multitude, and in such diuersitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be vsed. Neuerthelesse with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for vrgent causes and hasting of time. At the afternone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moue or disswade it. But when any bill is read, the speakers office is, as brieslie and as plainly as he may to declare the effect thereof to the house. If the commons

mons do assent to such billes as be sent to them first agréed vpon from the Lords thus subscribed, Les com-môs ont assentus, so if the Lords do agré to such billes as bee first agréed vpon by the Commons, they sende them downe to the speaker thus subscribed, Les Seigneurs ont assentus, If they cannot agré, the two houses (foz euerie bill from whence so euer it doth come is thise reade in each of the howses) if it bee vnderstode that there is any sticking, sometimes the Lordes to the Commons, sometime the Commons to the Lordes do require that a certaine of each house may meete together, and so ech part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part, not alwaies either part agré to others billes.

In the vpper house they giue their assent and dissent each man seuerallie and by himselfe, first for himselfe, & then for so many as he hath prorie. When the Chaunceller hath demaunded of them whether they will go to the question after the bill hath bin thise read, they saying onely content or not content, without further reasoning or replying: and as the more number doth agré, so it is agréed on, or dashed.

In the neather house none of them that is elected either knight or Burges can giue his voice to an other, nor his consent or dissent by prorie. The more part of them that be present onely maketh the consent or dissent. After the bill hath bin twice reade, and then engrossed and eftsones reade and disputed on ynough as is thought, the speaker asketh if they will goe to the question. And if they agré he holdeth the bill vp in his hand and saith, as manie as wil haue this bill go forward, which is concerning such a matter, say yea. Then they which allow the bill crie yea, and as manie as will not, say no: as the crie of yea or no is bigger

ger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they diuide the house, the speaker saying, as many as do allow the bill goe downe with the bill, and as many as do not sit still. So they diuide themselves, and being so diuided they are num- bzed who make the more part, and so the bill doth speed. It chaunceth sometime that some part of the bill is al- lowed, some other part hath much contrarietie and doubt made of it: and it is thought if it were amended it would goe forward. Then they chosse certaine com- mittees of them who haue spoken with the bil & against it, to amend it, and bring it in againe so amended, as they amongst them shall thinke meete: and this is be- fore it is engrossed, yea & some time after. But y^e agree- ment of these committees is no preiudice to the house. For at the last question they will either accept it or dash it, as it shal seeme good, notwithstanding that what- soever the committees haue done.

Thus no bill is an act of Parliament, ordinance, or edict of lawe, vntill both the houses seuerally haue a- greed vnto it after the order aforesaid, no nor then neither. But the last day of that parliament or session the Prince commeth in person in his Parliamēt robes, and sitteth in his state: all the vpper house sitteth about the Prince in their states and order in their robes. The speaker with all the common house commeth to the barre, and there after thankesgiuing first in the Lordes name by the Chauncelor &c. and in the commons name by the speaker to the Prince, for that he hath so great care of the good gouernement of his people, and for cal- ling them together to aduise of such thinges as should be for the reformation, establishing and ornament of the common wealth: the Chaunceller in the Princes name giueth thankes to the Lordes & commons for their paines and trauailes taken, which he saith the Prince wil re- member

member and recompence when time and occasion shall serue, and that hee for his part is readie to declare his pleasure concerning their proceedings, wherby y^e same may haue perfect life & accomplishment by his Prince, by authoritie, & so haue the whole consent of the realme. Then one reades the Titles of euerie act which hath passed at that session, but onely in this fashion: An act concerning such a thing &c. It is marked there what the Prince doth allow, and to such hee saith: Le roy, or la Roynie le veult. And those bee taken now as perfect lawes and ordinances of the realme of England and none other, and as shortly as may be put in print, except it be some priuate cause or law made for the benefit or prejudice of some priuate man, which the Romans were wont to call *privilegia*. These be onely exemplified vnder the scale of the Parliament, and for the most part not printed. To those which the Prince liketh not, hee answereth, Le Roy or la Roynie saduifera, and those be accounted utterly dashed and of none effect.

This is the order and forme of the highest and most authentick court of England, by vertue whereof all those thinges be established whereof I spake before, and no other meanes accounted available to make any new forfeiture of life, member, or landes of any English man, wherethere was no lawe ordained for it before. Now let vs speake of the said partes when they bee seuerall.

Of the Monarch, King or Queene of England.

CHAP. 4.

The Prince whom I now call (as I haue often before) the Monarch of England, King or Queene,
 hath

hath absolutely in his power the auctoritie of warre and peace, to desie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure or the aduice onely of his priuie Counsell. His priuie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the knights, and Esquires, such and so manie as he shall thinke good, who doth consult daily, or when neede is of the weightie matters of the Realme, to giue therein to their Prince their best aduice they can. The Prince doth participate to them al, or so many of them as he shall thinke good, such legations and messages as come from forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and kepeth so many ambassades and letters sent vnto him secreete as he will, although these haue a particular oth of a counseller touching faith and secrets administred vnto them when they be first admitted into that companie. So that herein the kingdome of England is farre moze absolute than either the Dukedome of Venice is, or the kingdome of the Lacedemonians was. In warre time, and in the fildes the Prince hath also absolute power, so that his word is a law, he may put to death, or to other bodily punishment, whom he shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath bin sometime vsed within the Realme befoze any open warre, in sudden insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessitie, especiallie, when by any meanes the punishment might haue bin done by order of lawe. This absolute power is called martial law, and euer was and necessarilie must bee vsed in all camps and hostes of men, where the time nor place do suffer

suffer the tardiance of pleading and processe, be it neuer so short, and the important necessitie requireth speedie execution, that with moze awe the Souldier might be kept in moze strait obedience, without which neuer captain can doe any thing baileable in the warres.

The Prince useth also absolute power in crying and decreeing the money of the Realme by his proclamation onely. The money is alwayes stamped with the princes image and title. The form, fashion, maner, weight, finenesse and basenesse thereof, is at the discretion of the Prince. For whome should the people trust moze in that matter than their Prince, seeing the coine is onelie to certifie the goodnesse of the mettall and the waight, which is affirmed by the Princes image and marke? But if the Prince will deceiue them, and geue the copper for silver or golde, or enhaunce his coyne moze than it is worth, he is deceiued himselfe, as well as hee doth goe about to deceiue his Subiectes. For in the same sort they pay the Prince his rents and customes. And in time they will make him pay ratable or moze for meate, drinke, and victualles for him and his, and for their labour: which experience doeth teach vs now in our dayes to be done in all Regions. For there euer hath been, and euer wil be a certaine proportion betwix the scarcitie and plentie of other things, with golde and silver. For all other measures and weights, aswell of drie things as of wet, they haue accustomed to be established or altered by the parlement, and not by the princes proclamation onely.

The Prince useth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paines for transgression of Lawes, where the payne of the Lawe is applyed only to the Prince. But where the forfaiture (as in popular actions it chaunceth

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many times) is part to the Prince, the other part to the Declarator, Detector or Informer, there the Prince doth dispenſe for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with vs at the Princes suite) the Prince giueth absolution or pardon, yet with a clause, *modo flet rectus in curia*, that is to say, that no man object against the offender. Whereby notwithstanding that he hath the princes pardon if the person offended will take vpon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offender.

The prince giueth all the cheife and highest offices or magistracies of the realme, be it of iudgement or dignitie, temporall or spirituall, and hath the tenthes and first frutes of all Ecclesiasticall promotions, except in the Uniuersities, and certaine Colledges which bee exempt.

All wittes, executions and commaundements, bee done in the Princes name. We doe say in England, the life and member of the kings Subiectes are the kinges onely, that is to say, no man hath hault nor moyenne iustice but the king, nor can holde plea thereof. And therefore all those pleas which touch the life or the mutilation of man, be called pleas of the crowne, nor can be done in the name of any inferiour person than he or she that holdeth the Crowne of England. And likewise no man can geue pardon thereof but the Prince onely: although in times past there were certaine Countie Palatines, as Chester, Durham, and Glouc, which were hault Justicers, and wittes went in their name, and also some Lozde Marchers of Wales, which claymed like priuiledge: al these are now weyn away. The supreme iustice is done in the kings name, and by his authoritie onely.

The

The Prince hath the wardshippe and first marriage of all those that holde lande of him in chiefe. And also the gouernment of all soles naturall, or such as be mad by aduenture of sicknesse, and so continue, if they be landed. This being once grounded by acte of Parlement (although some inconuenience hath bene thought to growe thereof, and since that time it hath bene thought very unreasonable) yet once annexed to the crown, who ought to goe about to take the club out of Hercules hand? And being gouerned iustly and rightly, I see not so much inconuenience in it, as some men would make of it: diuers other rights and preheminences the prince hath, which be called prerogatiues royals, or the prerogatiue of the king, which be declared particularly in the bookes of the common lawes of England.

To be short, the prince is the life, the head, and the authoritie of all things that be done in the realme of England. And to no prince is done more honoꝝ & reuerence, than to the king and Quene of England: no man speaketh to the prince, no serueth at the table, but in adoration and kneeling, all persons of the realme be bare headed befoze him: in so much that in the chamber of presence where the cloath of estate is set, no mā dare walk, yea though the prince be not there, no man dare tarrie there but bareheaded. This is vnderstode of the subjects of the realm, for all strangers be suffered there and in all places to vse the maner of their Countrey: such is the ciuilitie of our Nation.

*The chiefe points wherein one Common
wealth doeth differ from another.*

CHAP. 5.

NOW that we haue spoken of the Parlement (which is the whole, vniuersall, and generall consent and

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authoritie aswel of the prince, as of the nobilitie & commons, that is to say, of the whole head and body of the realm of England) and also of the prince, (which is the head, life and gouerner of this commonwealth:) there remaineth to shew, how this head doeth distribute his authoritie and power to the rest of the members for the gouernment of his realm, and the commonwealth of the politike body of England. And whereas all commonwealths and gouernments be most occupied, and be most diuers in the fashion of fīue things: In making of lawes and ordinances, for their owne gouernment: in making of battell and peace, or truce with foraine nations, in prouiding of money for the maintenance of themselves within themselves, and defence of themselves against their enemies, in choosing and election of the chiefe officers and magistrates: and fiftly, in the administration of iustice. The first and third we haue shewed is done by y^e prince in parlement. The second and fourth by y^e prince himselfe, the fift remaineth to be declared.

Of three maners and formes of trialles

or iudgements in England.

CHAP. 6.

By order and vsage of England there be three waies & maners whereby absolute and definite iudgement is geuen; by parlement, which is the highest and most absolute; by battle, and by the great assise.

Triall or iudgement by Parlement.

CHAP. 7.

The maner of geuing iudgement by Parlement be-
tweene private and private men, or betweene the
Prince

Prince and any private man, be it in matters criminall or ciuill, for land or for heritage, doth not differ from the order which I haue prescribed, but it proceedeth by bill thise read in each house, and assented to as I haue saide before, and at the last day confirmed and allowed by the prince. Howbeit such billes be seldome receiued, because that great counsell being inough occupied with the publique affaires of the Reame, will not gladly intermedle it selfe with private quarels and questions.

Triall of iudgement by battle.

CHAP. 8.

This is at this time not much vled, partly because of long time the Pope and the clergy, to whom in time past we were much subiect, alwayes cryed against it as a thing damnable and vnlawfull: and partly because in all commonwealths, as to the tongue, so to the maners fashions, habites, yea and kinds of trials & iudgements, and to all other things that is therein vled, time & space of yeares bringeth a change. But I could not yet learn that it was euer abrogated. So that it remaineth in force, whensoever it be demaunded. The maner of it is described in Briton.

The triall by assise or twelue men, and first of the three partes which be necessarie in iudgement.

CHAP. 9.

The two first iudgements be absolute, supreme and without appeale, and so is also the iudgement by the great assise. And because our maner of iudgements in England is in many things different from the fashion

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used either in France or in Italie, or in any other place the Emperors lawes and constitutions (called the ciuill lawes) be put in vse, it will be necessarie here to make a little digression, to the intent, that that which shalbe said hereafter, may be better vnderstode. All pursutes and actions (wee call them in our English tongue pleas) and in barbarous (but now vsuall) latine, placita, taking that name abusive of the definitiue sentēce, which may wel be called placitum, or *apiscor*. The French vseth the same, calling in their language, the sentence of their iudges areste or arest: in which words notwithstanding after their custome they do not sound the s. But we call placitum the action, not the sentence, and placitare barbarously, for to plead in English, agere, or litigare. Now in all iudgements being two parties, the first wee call the impleader, suiter, demaunder or demaundant, and plaintiffe. In criminal causes, if he professeth to be an accuser, we call him appellant, or appellour, and so, accusation we call appeale. The other we call the defendant, and in criminall causes, prisoner, for he cannot answer in causes criminall befoze he doe render himselfe, or be rendered prisoner.

Iudex, is of vs called Judge, but our fashion is so diuers, that they which geue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Judges, but the twelue mē. And the same order aswell is in ciuill matters and pecuniarie, as in matters criminall.

Of pleas or actions.

CHAP. IO.

PLEAS or Actions criminall be in English called pleas of the crowne, which be all those which tende to take

away a mans life or any member of him, for his evil des-
serving against the prince and commonwealth.

And this name is geuen not without a cause. For ta-
king this for a principle, that the life and member of an
Englishman is in the power onely of the prince and his
lawes, when any of his Subiects is spoyled either of life
or member, the Prince is endamunaged thereby, & hath
good cause to aske account how his Subiectes shoulde
come to that mischiefe. And againe, for so much as the
Prince who governeth the scepter, and holdeth y^e crown
of England, hath this in his care and charge, to see the
Realme well gouerned, the life, members and possessi-
ons of his Subiects kept in peace and assurance: he that
by violence shall attempt to breake that peace and assu-
rance, hath forsaited against the Scepter and crowne
of Englande: and therefore not without a cause in all
inquisitions and indictments, if any be found by the iu-
men to haue offended in that behalfe, straight the prince
is said to be partie, and he that shall speake for the Pri-
soner shall be rebuked, as speaking against the prince.
Nevertheless, it is neuer defended, but the prisoner,
and partie defendant, in any cause may alledge for him
all the reasons, meanes, and defences that hee can,
& shall be peaceablie heard and quietly. But in those
pleas and pursutes of the Crowne, Procuro^r or Ad-
uocate hee gets none, which in ciuill and pecuniarie
matters (bee it for lande, rent, right, or possession, al-
though he pleade against the Prince him selfe) he is ne-
uer denied.

Sauing in ap-
peals, and vpo
a speciall plea.
Actio, is the
parties whole
suite: Breue, is
the kings pre-
cept.

Pleas ciuill be either personall or reall: personal, as
contracts, or for iniuries: reall, be either possessorie, to
aske, or to keep the possession: or in rem, which we call a
writte of right. For that which in the ciuill law is cal-
led actio, or formula, we call writte in English: so the
Graekes called it worde for word and in our bar-
barous

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barous latine we name it *breue*.

And as the olde Romanes had their actions some *ex iure civili*, and some *ex iure pratorio*, and ordinarily *praetor dabat actiones*, & *formulas actionum*: so in England we retaine still this, and haue some wittes out of the Chauncerie, other out of the common pleas, or the kings bench.

*Of the chiefe Tribunals, Benches, or
Courts of England.*

CHAP. II.

In times past (as may appeare to him that shall with iudgement reade the Histories and antiquities of Englande) the courtes and benches followed the king and his Court wheresoeuer he went, especially shortly after the conquest. Which thing being found very cumbersome, painfull, and chargeable to the people, it was agreed by Parlement that there shoulde be a standing place where iudgement should be geuen. And it hath long time bene vsed in Westminster hall, which king William Rufus buylded for the hall of his owne house. In that hall be ordinarily seen thre Tribunals, or Iudges seates. At the entrie on the right hand the common pleas, where ciuill matters are to be pleaded, speciallie such as touch lands or contractes. At the vpper ende of the hall on the right hand, the kings bench, where pleas of the crowne haue their place. And on the left hande sitteth the Chancello, accompanied with the master of the Rolles, who in latin may be called *custos archinorum Regis*, and certaine men learned in the ciuill law, called Masters of the Chauncery, in Latin they may be called *Assessores*.

Of

Of the times of pleading called
Termes & of the Chauncellor
and Chauncerie.

CHAP. 12.

Two thinges may be moued in question here, how all England, (being so long and so large, and hauing so many shires and prouinces therein) can be answered of iustice in one place, and in 3. benches, be they neuer so great? Another (whereas the Kinges Bench is exercised in criminall causes, and in all pleas of the crowne, and the common place in all ciuil causes, real, and personal) what place then hath the Chauncerie?

The first question will seeme more marueilous, and haue more occasion of doubt, when I shall also tell that the Law is not open at all times, no not the third part of the yeare. But where all other Cities and common wealthes had all the yeare pleas, suites and iudgements, except for certaine holy daies and haruest, and vintage, or when for some vrgent cause the Lawe was commaunded to be stopped, which is called *Iustitium*. Contrarie in ours it is but fewe times open. That is onely four times in the yeare, which they call Termes. After Michaelmas about ten daies, during five or sixe weekes at the least. After Chyristmas about a moneth, enduring by the space of thre weekes. Then from rby. dayes after Easter by the space of thre weekes and od daies. Likewise from the sixt or seuenth day after Trinitie sunday, during two weekes and odde daies. All the rest of the yeare there is no pleading, entring nor pursuing of actions. This small time, and all that but in one place may seeme verie iniurious to the people, who must be faine to suffer much wrong for lacke of Iustice and of place and time to pleade: but vn-

to that hereafter I intend to answer more fully, and in the meane while that shal suffice which the wise Cato answered to one who moued that the pleading place in Rome might be couered ouer with canuas as their theaters were, to the intent that the plaintiffs and defendantes that were there might pleade their matters more at ease, and not bee in so much danger of their health by the heate of the Sunne striking full and open vppon their heads, which was no small grieffe and disease, specially at Rome. Nay (saith Cato) for my part I had rather wish that al the waies to the place of pleading were cast ouer with Galthrops, that the sorte of such as loue so well pleading, should feele so much paine of those pricks in going thither as their heads do of the Sunne in tarrying there: hee meant that they were but idle, whot heads, busie bodies, and troublesome men in the Common wealth that did so nourish pleading: good labourers and quiet men could be content to ende their matters at home by iudgement of their neighbours and kinsfolke without spending so their money vppon Procurers and Aduocates whom wee call Attorneis, Counsellers, Sergeantes, and generallye men of lawe. Those he accounted profitable citizens, who attend their honest labour and busines at home, and stande not waiting and gaping vpon their Rolles and processe in the law: as for the other, by his iudgement, it was no matter what mischiefe they suffered. To the other question of the chancerie, this I answer: That our lawe which is called of vs the common law, as yee would say *Ius ciuile*, is and standeth vppon ^{expressis} *expressis*, that is *Ius summum*: and their maximees be taken so straitly that they may not depart from the tenour of the wordes, euen as the old ciuill lawe was. And therefore as that lacked the helpe of a Pretor (which might *moderari illud ius summum*, giue actions where none

none was, mitigate the exactnes and rigoure of the law witten, giue exceptions, as *metus, doli mali, minoris etatis, &c.* for remedies, and maintaine alwaies *equum bonum*:) the same order and rancke holdeth our chauncerie, and the chauncelloz hath the verie authoritie herein as had the Pretor in the olde ciuill lawe befoze the time of the Emperours. So he that putteth vp his bill in the chauncerie, after that he hath declared the mischiefe wherein he is, hath relæse as in the solemne *Forum*. And for so much as in this case he is without remedie in the common lawe, therefore he requireth the chauncelloz according to equitie and reason to prouide for him, and to take such order as to good conscience shall appertaine. And the court of the Chauncerie is called of the common people the court of conscience, because that the Chauncelloz is not strained by rigour or forme of wordes of lawe to iudge but *ex aequo* and *bono*, and according to conscience as I haue saide. And in this court the vsuall and proper forme of pleading of England is not vsed, but the forme of pleading by witting, which is vsed in other countries according to the ciuill law: and the triall is not by ry. men, but by the examination of witnes as in other courtes of the ciuill law.

Out of this Court, as from the person of the Prince come all maner of originall wittes. The declaration of wittes is at large set down in the register of wits, and in the *Natura breuium*. Out of this Court come most commonly Commissions, Patentes, Licences, Inquisitions, &c.

The Judges of this Court are the Lord Chauncelloz of England, Assistants, the maister of the Rolles, and six Bailiffs of the Chauncerie, which are commonlie Doctors of the ciuill law.

Officers are the sixe Clarkes of the Chauncerie, the

Clark of the Crowne general, the Register, the Comp-
troller of the Seale, two examiners, the Clarke of the
hampier, the three Clarkes of the pettie bagge, the Cur-
sitors, the Sergeant of the mace.

The Lord Chaunceloꝝ is the keeper of the great Seale,
and hath it carried with him whersoever he goeth.

The Maister of the Rolles is the keeper of the Re-
cordes, Judgements and sentences given in the court
of Chauncery.

The sixe Maisters are assistantes to the court, to shew
what is the equitie of the ciuil law, and what is Con-
science.

The Clarke of the Crowne is the chiefe Guardian
of all the matters of the Crowne: what are Crowne
matters and pleas of the Crowne, see in the learned
booke of Stanford, called the Pleas of the Crowne.

The sixe Clarkes are the Attorneis aswell foꝝ the
Plaintiffe, as Defendant in euerie suite in this Court.

The Register is the engrosser and keeper of the de-
crees, publications orders and iniunctions issuing out of
this court.

The two Examiners are such as take the examinati-
on of the witnesses brought to proue oꝝ reproue any
thing suite in this Court, and to put their depositions &
answers made to their interrogatoꝛies in writing.

The Comptroller of the Seale is to see and allow of
all the writtes made in this court.

The Clarke of the Hampier is he that doth receaue
the fines due foꝝ euery writ sealed in this Court.

The three Clarkes of the Petie bagge are they that
receaue the offices that are founde in the Courte of
Wardes.

The Cursitors are Clarkes appointed to their seuer-
all shires which do write original writtes that belong
to this Court, oꝝ the Common place.

The Sergeant carrieth the Mace before the Lord Chauncelloꝝ, and is to call any man before him at his commaundement.

The Procelle in the Chauncerie is a *Sub pana*, which is but to cal the partie before him vpon a paine, as vpon paine of lx. s. &c. And this is the way vled to bzing in the partie, oꝛ else by the Sergeant as before.

The punishment is, if the partie will not come in, oꝛ comming in, wil not obey the oꝛder of the Court, imprisonment during the pleasure of the Lord Chauncelloꝝ.

The oꝛder of proceeding is by Iniuuctions, decrees & oꝛders which are to binde the partie, and if he resist his punishment is imprisonment.

The matters in this court are all causes wherin equitie and extremitie of law do strue, and where the rigoure of lawes haue no remedie, but conscience and the moderation of *Summum ius* hath sufficient.

And here is to be noted, that conscience is so regarded in this court, that the lawes are not neglected, but they must both ioine and meete in a third, that is in a moderation of extremitie.

The Court is called of some *Officina Iuris Civilis Anglorum*, because out of this Court issue al maner of procelle which giue the partie his cause of action in other Courtes.

Of Iudges in the common Lawe of England, and the manner of triall and pleading there.

CHAP. 13.

The Prince out of the numbers of those who haue bin Counsellors oꝛ Sergeantes at the Law, which

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bee those who in Latin are called *causidici* or *aduocati*, chooseth two of the most approued for learning, age, discretion and exercise, of whom the one is called chiefe Justice of the Kinges bench, or simplie chiefe Justice, the other, chiefe Justice of the common place, and others to the number of sixe or more, which haue each an ordinarie fee or stipend of the Prince.

These do sitte at such daies as be terme, which may be called *Dies legitimi iuriditi*, or *fasti*, in their distinct places, as I haue said before. Where they heare the pleading of all matters which do come before them: and in ciuill matters where the pleading is for money, or land, or possession, part by writing, and part by declaration and altercation of the aduocates the one with the other, it doth so proceede before them till it do come to the issue, which the Latines do call *statum cause*, I do not meane *contestationem litis*, but as the Rhetoricians do call *statum*, wee do most properlie call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessell issueth out, is voided and emptied) and no where else: that stroke well stricken is the departing of all the quarrels. Issues or *status* in our Lawe be ordinarily two, *facti* and *iuris*.

Of the Kinges Bench.

CHAP. 13.

The Kinges Bench is the Kings court, so called because vsually the Kinges haue sitten there, and also because that therein are all causes handled which appertaine to the Crowne: and such causes as wherein the King or Quene is a partie, if they properly appertain not to some other court.

The

The Judges of the Kinges Bench are the Lordes chiefe Justice of Englande, with other his companions assistant in giuing iudgement.

The Sergeantes and Counsellors do debate the cause.

The sentence is giuen by the chiefe Justice, the others all or the most part assenting, as it shall appeare to bee in other Courtes likewise. If they can not agree, then is the matter referred to a demurre in the Erchequer chamber befoze all the Justices of both the benches, viz. the Kinges Bench, and the common pleas, and the Lord chiefe Barron of the Erchequer.

The officers in the Kings Bench are, the chiefe Prothonotharie, the Secundarie, the Clarke of the Crowne, the Clarke of the Exigentes, the Clarke of the Papers, the Custos Breuium, and Custos Sigilli.

The Prothonotharie is he, that recozdeh all iudgements, orders, and rules in this court, and all verdicts giuen, being not of Crowne matters.

The Secundarie is the Prothonotharies deputie, for the said causes, and hee is the keeper and maker vp of these recozdes in booke.

The Clarke of y^e Crown, is to frame al inditelements offelonie, treason, murther, &c. all maner of appeales, and after to recozd them, and enter the verdict, and to make and keepe the Recozdes touching these matters.

The Clarke of the Exigentes is to frame all maner of Proceses of *Exigi facias*, which do issue out of that Court to outlawe any man, and to recozde the outlawry.

The Clarke of the Papers is he that kepeth al rolles, scriptes, and pleadings, and other thinges in wryting which are not of recozd.

The Custos breuium is he which fileth all the writs

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indiciall and originall, after the Sherife hath returned them, he is chargeable if any be embeseled or priuily conueied away from the file.

The Custos Sigilli is hee that doth keepe the Seale, and seeth all iudiciall writtes, and all Patentes, licenses issuing out of this Court, and taketh the fee due for them, and thereof is to make his accompt.

There are certaine Attorneis belonging to this Court in number as the Prototrozie shall appoint: those are for Plaintifs and defendantes in euery cause, and they frame and make the pleadings.

The maner of proceeding in this court is by Latitat, arrest, and Bill.

The Latitat is to bring the partie in when hee is not to be found, or will not appeare and answer.

Arrest is when the partie is arrested, and then is giuen to fynde baile. viz. two sufficient sureties or more as the case shall neede.

By Bill the suite is when the partie is in *Custodia Mareschalli* and is from thence brought to answer.

The Matters in this Court are properly all matters of the Crowne, whereof see Stanfordes booke aforesaide.

In these they proceede by Inditeementes, verdict, appeale, Improperly all suites wherein the King is a partie, or may haue any losse. Such are Conspiracies, Champarties, Ambasier, Maintenance, Decies tantum maymes, Slanders, actions sur le cas: of these see *Natura breuium*.

Of

Of the court of common pleas.

CHAP. 14.

The court of common pleas is the kings court, where in are holden all common pleas betwene Subiect & Subiect, of all matters of Common law: so called, for that it serueth for the exact and precise administration of the common law.

The Judges in this Court are, Lord chiefe Justice of the common pleas, three other his associates. The Sergeāt at the law, whose number is sometime more, sometimes lesse, at the pleasure of the prince. These all are swozne to serue the turn of the common law at this barre.

Two of them are alwayes appoynted to serue the Princes turne in what Court soeuer, and are called the *N. Sergeants*.

The officers of this Court are the *Custos Breuiū*, three *Protonotharies*, the Clarke of the warrants, the Clarke of the *Escoynes*, diuers Attorneys, Fillisers for enery shire, Exigenter for every shire, the Clark of the Juries, the *Cirographer* for fines, the Clarke of the *Quænes silver* for errors in this Court committed, the Clarke of the seale, as befoze for the kings bench.

The *Custos breuium* is chiefe Clarke in the court, and he hath the custodie of all the writtes whatsoeuer, returnable into this court, come they in either at the day of the returne, or after the day, which is called *Post diem*.

The *Protonotharies* are they which after the parties haue appeared in Court, doe enter the matters in suite, and make the pleadings, and enter them.

The Fillisers are they which make vp all meane

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proces vpon the original writtes, and the same writtes returned by the Sherife, are by the attorneyes deliuered to the Custos breuium to file or string, there to remain of record.

The Exigentes are such as make out the exigents and writs of proclamation into euery Countie, where the parties are, that vpon the meane proces or summons will not appeare.

The Clarke of the warrants is he which doeth take the warrants of an Atturney, which shall prosecute for the plaintife or defendant: and is he that enrolleth all deedes acknowledged before the Iustices of the same Court.

The Clarke of the Essoynes is hee which doeth essoyne the defendants in euery action, before the day of his appearance.

An essoyne is an ordinarie delay by office of Court in action: and the officer before whom the Clarke is to take these essoines, is the peny Iustice in the common pleas, who for that purpose sitteth thre dayes before the Terme.

The common Attorneyes are such as are allowed in this Court by the Lorde chiefe Iustice of the common pleas, and his assistance, to prosecute or defend according to the instructions of their Clients, for the plaintife or defendant.

The Clarke of the iuries is he that doeth make the Venire facias, to the Sherife to warne the Iuries by.

The Cirographer is he that hath the writte of covenant with the concord brought vnto him, and he maketh Andentures tripartite, whereof two are deliuered to the partie for whose vse the fine is acknowledged. And the third part is reserved with him. And all the proclamations of the same fine, according to the statutes made, are endozced on the third part remayning, and it is commonly

monly called the foote of the fine.

The Clarke of the Quænes silver is a distinct Office of the fines, and is he who setteth downe the money that her Maiestie is to haue for the fine, according to the verely value of the land confessed, knowen, deposed, or agreed vpon.

All errors in this court committed, are reformed in the kings bench, before the Lord chiefe Justice, & other Justices there assistant, by writte of error.

There is also the Clarke of the outlawries, who is the kings Atturney generall, and hee entereth the outlawrie for the Quæne, after the exigent deliuered: and he maketh all the writtes of outlawrie, and none are to be made but by him.

The matters of the common pleas are all suites of common law commenced by any writte, originall, real, or personall.

Reall are such as touch the inheritance, or fee of any man.

Personall are such as touch transitory things, as goods, chattels, personall wrongs, &c.

The difference betwene a writte originall, and a writte iudiciall, is this: the originall saith in the ende of it (in the person of the king or Quæne) teste meipso, or meipsa, apud Westmonasterium. The iudiciall writte saith in the end, Teste Christophoro Wray, or Teste Iacobo Dier, or such other as shalbe Lord chief Justice of either of those benches.

The order of processes how they follow the one after the other. In this court is first a Summoneas in some action, then an Attachias, but in most a Capias, then a Capias pluries then Exigi facies, and a proclamation into the Countie where the defendant dwelleth.

The Summoneas is the original, and goeth out of the Chancerie, and is directed to the Sherife, to bring the

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partie by a day.

The sherifes order in seruing this writte, is to goe himselfe, or his Baylife, to the land, and there to garnish the partie, by sticking vp a sticke on his land, which done, the sherife returneth two common pledges, Iohannes Do, and Richardus Ro, and two Summonees, Richardus Den, Henricus Fen. After the summonees, if the partie come not in, issueth out an Attacheas, in nature of a precept, to authorize the sherife to goe to his land or house, and there to take a pledge for his appearance.

But if the partie plaintife meane to outlaw the defendant, he getteth a Summoneas out of the Chancery to the sherife to warne the party, who returneth nihil habet, &c. Then the plaintife getteth a Capias to take his bodie, and then a Lias capias, then a pluries capias, to all which the sherife returneth in order as they be geuen out, Non est inuentus. After which if the party appeare not, goeth out to the sherife the Exigi facias, and a proclamation to proclayme the partie in fiue seuerall Countie dayes: after which proclamations if he do not appeare, he is returned Quinto exactus, & non comparuit, & ideo utlagatus, vnlesse he doe first purchase a Superfedeas, to the Court to surcease. The Superfedeas is graunted at the suite of the plaintife, to stay the outlawrie, and is an apparance to the suite, for the defendant suggesting to the court, that his erigēt improuide emanavit, shewing that the defendant was alwayes readie to appeare by his Atturney. This done, the plaintife declareth the defendant answereth, if the answer be issuable they procede to triall. The maner of proceeding is either to ioyne issue, & so to passe to verdict, or els to demurre. The triall is by verdict, when the question is made de facto, as, where the matter was done, when, by whom, &c.

Of

Of the two maner of issues.

CHAP. 15.

If the question be of the lawe, that is, if both the parties doe agree vpon the fact, and ech doe claime that by lawe hee ought to haue it, and wil still in that sorte maintaine their right, then it was called a demurrer in law: where if in the law the case come to the Judges that sitte, doubtfull, it is called a checker chamber case, and all the Judges will meete together, and what they shall pronounce to be the lawe, that is held for right, and the other partie loseth his action or lande for ever. If the Sergeants or Counsellors doe stande vpon any point in the law which is not so doubtfull, the Judges who be taken for most expert, biddes him goe forwarde, and if hee hath no other to say, but standeth vpon that point of the law, that bidding goe forwarde is taken that hee loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or Iuris. So is that case where the law is not doubtfull, according to the matter contained in the declaration, answer, replication, retort, or triplication, the Judge out of hand decideth it. And it is the maner that eche partie must agree to the other still in y fact which he cannot deny. For if he once come to deny any dede as not done, not his wytyng, that the man by whom the aduersarie claymeth, was not the aduersaries auncestor, or the euidence which his aduersarie bringeth is not true, or that his giste was former, or any such like exception which is available to abate the action, or barre the partie: and the other ioyneeth in the affirmatiue, and will auerre and prooue the same, this is called the issue, and immediatly all

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by all question of the law ceaseth, as agreed by both the parties, that there is no question in the law. Whē as that issue facti is found by the twelue men of whom we shal speake hereafter, so the one partie or other loseth his cause and action: so that contrarie to the maner of the ciuill law, where first the fact is examined by witnesses indices, torments, and such like probations to finde out the trueth thereof, and that done, the aduocates doe dispute of the law, to make of it what they can: saying, ex facto ius oritur Here the Sergeants or Counsellors befoze the Judges doe in passing forward with their pleading determine and agree vpon the law, and for the most part, and in maner all actions, aswell criminall as ciuill, come to the issue and state of some fact which is denied of the one partie, and auerred of the other: which fact being tried by the twelue men, as they finde, so the action is wonn or lost. And if a man haue many peremptory exceptions (peremptorie exceptiōs I call only those which can make the state and issue) because the twelue men be commonly rude and ignorant, the party shalbe compelled to chouse one exception whereupon to founde his issue, which chosen, if he faile in that by the verdict of twelue men, he loseth his action and cause, and the rest can serue him for nothing.

Having seen both in France and other places many deuyses, edicts and ordinances, how to abridge processe, and to finde how that long suites in law might be made shorter, I haue not perceined nor read as yet, so wise, so iust, and so well deuised a meane found out as this, by any man among vs in Europe.

Trueth it is, that where this fashion hath not bene vsed, and to them to whom it is newe, it will not bee so easilie vnderstood, and therefore they may peradventure be of contrarie iudgement: but the more they doe weigh & consider it, the more reasonable they shall find it.

How

Now the issue, question, or status iuris is decided, I have tolde: now I wil shew how it is tried whe it doth come to the question, state, or issue of the dæde or fact. And first I must speake more largely of the maner of proceeding in the processe, and of such persons as be necessarie for the execution thereof.

Of the sherife of the shire, and of the Court of Exchequer.

CHAP. 16.

THe Romanes had to execute the commandements of the magistrates, Lictores, Viatores, Accensos. The ciuill law since that time hath other names, termes, and officers. The execution of the commaundements of the magistrates in England, is ordinarily done by the sherifes. The sherife (which is as much to say as the Reeue or Baylie of the shire) is properly word for word Questor prouinciæ, it is he which gathereth vp, and accounteth for the profits of the shire, that come to the Exchequer. The Exchequer (which is Fiscus principis, or ararium publicum, and I cannot tell in what language it is called Scaccarium, some think that it was first called statarium, because that there was the stable place to account for the reuenues of the crowne, as well y^e which came of the patrimonie, which we call the demeasnes, as that which commeth of other incident acquisitions, be they rents, customes, tenths, quinzies, taxes, subsidies, wheresoeuer the Prince or his Court be, according to the time and occasion) was a place stable, continuall, and appointed for to reckon and account. The bearers of the account (who in Latin may be called tribuni ararii) haue Auditors vnder them, which the Latines doe call Rationales, but they are the chiefe for the accounts

Scats in ancient Saxon is that which we by a borrow ed terme call treasure, wherof is deriued Scaccariū signifying a court dealing with the kinges treasure or reuenues, & also escaetor that is an officer which implieth the kinges profit.

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accounts of the prince, and may be called iuridici rationales, in English we call them Barons of y^e Exchequer, whereof is one who is called the chiefe Baron, as Tribunus, or Iuridicus rationalis primus, or princeps, with others to the assistant: the Chancellor of the Exchequer, two Chamberlaines, and Atturney generall. The cheef of all is called high treasurer of England, as you would say in latin, Supremus ærarii anglici quæstor, or Tribunus ærarius maximus.

He hath the charge and keeping of the king or Quænes treasure, and many officers are at his sole appointment and to him accountant, as wel in the tower, exchequer, as elsewhere: as, Auditors in the mint, Auditors and tellers in the Exchequer, Receivers, &c.

The Chancellor is the vnder treasurer, and is gouerner of the Court, vnder the high treasurer. Many officers also are at his appointment.

The chiefe Baron is the iudge in law cases incident to this Court, the three other Barons are assistants.

The Atturney is the atturney generall, to defend the Quænes right, and to peruse all grauntes, particulars, suites, and causes handled in this Court. There are common atturneys besides, which serue for the suiters of this Court.

The other Officers are two Remembzancers, two Clarkes of the Pipe, two of the first fruites and tenthes.

The Remembzancers are those which keepe all the Records of the Exchequer betwæne the Quæne and her subiectes, and enter the Rules & orders there made, the one is for the Prince, the other for the Lord Treasurer.

The Clarkes of the Pipe are those that make leases vpon particulars, and receiue the Shirifes accomptes, those receaue also the bondes & titles of other assurances

In the office of the first fruites are receaued all first
fruits

fruites due to her Maiestie by Bishoppes, Deanes, and all ecclesiasticall persons, answerable by order of the Law.

Other officers are Tellers, Auditors, Collectors, rent gatherers, taile makers, &c.

The matters of this court are all penall punishment, as intrusions, alienations without license, penall forfeitures vpon popular actions (a popular action is while the one part is giuen to the informer, the rest to the Prince.) Of these see the whole bodie of the Statutes at large, or in Rastalles collection.

In this Court are handled all paymentes, accompts, expences of the Quænes reuenues.

The vsuall Processe of this Court is a *Sub pana* out of this Courte, or a messenger to call the partie.

In this court be heard Quadruplatores, which wee call promoters, which be those that in popular and penall actions be delatores, hauing thereby part of the profit by the law assigned. In this court if any question be, it is determined after the order of the common law of England by the twelue men, as I haue said: and al customers which were in Latine called Publicani, in Græke *τελωνιται* doe account in this office.

The Sherife of the shire is called in our common Latine Vicecomes, as one would say, vicarius comitis, or procomes, doing that seruice, to attend vpon the execution of the commaundements of the Tribunals or iudges, which the Earle or Countie should doe: which Earle or Countie for the most part was attending vpon the prince in the warres, or otherwise about the prince, as y^e wo^rde beareth, comes principis: whereby it may appeare, that the chiefe office of the Countie or Earle, was to see the Kings iustice to haue course, and to be well executed in the shire or Countie, and the Princes reuenues well answered, and brought in *ærarium Principis*, which is

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called of vs the treasure.

If any fines or amerçiaments, which in latine bee called *multæ*, be leuied in any of the said Courts vpon any man, or any arrerages of accounts by the latines called *reliqua*, of such things as is of customes, taxes, subsidies, or any other such occasions, the same the sherife of the shire doeth gather, and is respondent therfore in the Exchequer. As for other ordinarie rents of patrimoniall lands, and most commonly for the taxes, customes and subsidies, there be particular receiuers and collectors, which do answere it into the Exchequer. The sherife hath vnder him an vnder sherife at his charge and appointment, learned somewhat in the lawe, especially if he be not learned himselfe, and diuers bailifes which be called errants, whom he maketh at his pleasure, who can knowe each land and person in the shire, and their abilitie to goe vpon enquestes, either to distraine, or to summon him to appeare whom the sherife shall appoint: and for this cause to the sherifes as to the minister most proper of the lawe the writtes be directed.

When any thing cometh to an issue of the dedde or fact, there is a writ or writing directed to the sherife of the shire where the lande is, whereupon the controuersie is, or where the man dwelleth of whome the money is demaunded, which writ is called *venire facias*. Then after the same effect an *alias*, *pluries* or *distringas* according to the nature of the action to the returne of the shirife. And if for any disobedience of not coming and appearing there be a fine (which the Latins doe call *Multa*) set vpon any iurores head, the sherife is charged with it, and taketh the distresses which in Latin be called *Pignora*, and answereth therfore to the exchequer. The sherife also is readie by himselfe or by his vndersherife to serue aswell the Iustices of peace in

In their quarter sessions as the Iustices called *Itinerantes* in their great assises, when they come into the shire, which is twice in the yeare, to dispatch and voide actions criminall and ciuill depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners committed to the prison which we call the goale, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commaundementes according to the lawe as the Judges doe ordaine, and this is ynough for the sherife.

Of the xij men.

CHAP. 17.

OF what manner and order of men in the common welth the xij men be I haue already declared. The sherife alwaies warneth xiiij. to appeare, least peradventure any might be sicke or haue a iust cause of absence: and if there be not enow to make an enquest, the absentes be amerced. For although they be called xij. men, as a man would say *duodecim viri*, yet if they be xvi. or the whole number of xiiij. that is no matter, xij. they must be at the least to make an enquest, or as some call it a quest. An enquest or quest is called this lawefull kinde of triall by xij. men. In actions ciuill which is either of contractes or for land, or possession when so many of those which be warned appeare at the call as be able to make an enquest, which as I said before be no lesse then xij, either part when they be come taketh their chalenges against so many of them as they will, which be that he may not spende so much lande a yeare, he is alied, sed, or seruant to his aduerse partie,

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he is his enemie, &c. And two of the whole number doe trie, and allow or disallow the rest.

If after exceptions there bee so many reiected, that there is not a full enquest, in some cases that day is lost, in some the enquest is filled ex circumstantibus: when the quest is full, they be swozne to declare the trueth of that issue, according to the evidence and their conscience. Then the Sergeants of either side declare the issue, and each for his client saith as much as he can. Evidences of writings be shewed, witnesses be swozne, and heard before them, not after the fashion of the ciuill law, but openly, that not onely the twelue, but the Judges, & parties, and as many as be present may heare what each witnesse doeth say: The aduerse partie, or his aduocates which we call Counsellors and Sergeants, interrogateth sometime the witnesses, and driueth them out of countenance.

Although this may seeme strange to our Ciuilians now, yet who readeth Cicero and Quintilian, well shall see, that there was no other order and maner of examining witnesses, or deposing, among the Romanes in their time. When it is thought that it is inough pleaded before them, and the witnesses haue said what they can, one of the Judges with a briebe and pithie recapitulation, reciteth to the twelue in summe the arguments of the Sergeants of either side, that which the witnesses haue declared, & the chiefe points of the evidence shewed in writing, and once againe putteth them in minde of the issue, and sometime geueth it them in writing, deliuering to them the evidence which is shewed on either part, if any be, (evidence here is called writings of contractes autenticall, after the maner of Englande, that is to say, written, sealed, and deliuered) and biddeth them goe together.

Then there is a Bayle charged with them, to keepe them

them in a chamber not farre off, without bread, drinke, light or fire, untill they be agreed: that is, till they all agree vpon one verdict concerning the same issue, and vpon one among them, who shall speake for them all when they be agreed: for it goeth not by the most parte, but each man must agree. They returne, and in so fewe words as may be, they geue their determination: fewe I call sixe, seven, or eight wordes at the most, (for commonly the issue is brought so narrow, that such number of wordes may be inough to affirme or to deny it,) which done, they are dismissed to goe whether they will. The partie with whom they haue geuen their sentence, geueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come, some xx. some xxx. or xl. miles or more, to the place where they geue their verdict all, the rest is of their owne charge. And necessarily all the whole ry. must be of the shire, and iij. of them of y^e hundred where the land lieth which is in controuersie, or where the partie dwelleth who is the defendant.

Of parties of Shires called Hundreds,

Lathes, Rapes, Wapentakes.

CHAP. 18.

A Hundred, or Lath, Rape, or Wapentake, be called of the diuisions or parts of shires in diuers countreys diuerslie named, after the maner and language of each Countrey. For the shires be deuided, some into x. xij. xv. xx. or xxx. Hundreds, more or lesse, either that they were at the first C. Townes and Villages in each hundred: and although now they be but xvj. xx. xxx. xl. l. or more or lesse, yet it is still called an hundred, or els there were but so many at the first as be now, or a

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fewe moze oꝛ lesse, and they did finde the King to his warres an hundꝛeth able men. Lath, and rape I take to be names of seruice, foꝛ that so many towneꝝ in old time, and in the first pouertie of the Realme did mete together in one day to carrie the Lordes coꝛne into his barne, which is called in old English a Lath. Oꝛ that they mette at commaundement of the Lord to reape his coꝛne.

Or as some say, because in such places the subjects had their armour appoynted them, and there did take their weapons.

Wapentake I suppose came of the Danes, oꝛ peradventure of the Saxons. Foꝛ that so many towneꝝ came by their oꝛders then, to one place, where was taken a muster of their armour & weapons, in which place from them that could not finde sufficient pledges foꝛ their good abearing, their weapons were take away: weapen oꝛ wapen in old English do signifie all armes offensive, as sword, dagger, speare, launce, bill, bowes, arrowes.

Of the place where the musters were taken, oꝛ where the saide seruices were done, the hundꝛeds Lathes, Rapes, and Wapentakes, had and haue yet their names, which be most commonly good towneꝝ, and it is to be thought at the first they were all such. But sometime now in places whereof the hundꝛed hath the name, no mention noꝛ memoꝛe of a Towne remaineth: such mutation time bꝛingeth with it of all who things. A hundꝛeth hath one oꝛ two high constables, hath some authoritie ouer all the lower and particular Constables. Those high Constables bee made by the Iustices of the peace of the shire, and each hundꝛed hath his bailife, who is made by the Lord, if any hath that libertie, oꝛ else by the shirife of the shire foꝛ the time being.

Of

Of the court Baron.

CHAP. 19.

IT may appeare strange that of xxxvj. shires, whereof each shire is diuided into diuerse hundreds, each hundred containing diuerse parishes, all pleading should be but in one place, that is in Westminster hall, and that but in certaine times of the yeare, making little more than one quarter of the yeare in the whole. And one would thinke that there should be much lack of Justice and right, and much wrong take without redresse. But it is not so: The people beyng accustomed to liue in such an equalitie of Justice, and that in such sort that the rich hath no more aduantage therein than the poore, the proces, and proceedings to the iudgement beyng so short, and iudgements also beyng peremptorie and without appellation: Yet to helpe for small matters, where no great summe is in question there are other courtes. In every shire from thre weekes to thre weekes, the sherife for small thinges not passing xl. s. and in certaine hundreds and liberties the bailie likewise from thre weekes to thre weekes holdeth plea. And whosoever is possessor and owner of a mannor, may holde from thre weekes to thre weekes, or at his pleasure of his tennantes and amongst his tennantes a court called a court Baron. And there his tennantes beyng swozne make a Iurie which is not called the enquest, but the homage. These principallie doe enquire of the copie holders, and other free holders that be dead since the last court, and bring in th eir heires, and next successors, and likewise of incroachment or intrusion of any of the tennantes against the Lorde, or among themselves. They make orders and lawes amongst them.

themselves, the paine of them if they be after broken, commeth to the Lord. And if any small matter be in controversy, it is put to them, and commonly they doe end it. But these courts doe serue rather for men that can be content to be ordered by their neighbors and which loue their quiet and profit in their husbandrie, more than to be busie in the law. For whether party soeuer wil, may procure a writte out of the higher Court, to remoue the plea to Westminster.

In cities and other great townes there be diuers liberties to holde plea for a bigger summe, which doe determine as wel as the common law, and after the same maner, and yet for them that wil, it may be remoued to Westminster hall.

King Henrie the eight ordeyned first a President, Counsellors and Judges, one for the Marches of Wales, at Ludlow, or elsewhere: another for the North parts of England, at York, where be many causes determined. These two are as be Parlements in France. But yet if there be any matters of great consequence, the partie may moue it at the first, or remoue it afterwards to Westminster Hall, and to the ordinarie Judges of the Realme, or to the Chaunceller, as the matter is.

These two Courts doe heare matters befoze them, part after the common law of England, and part after the fashion of the Chauncerie.

Of the Leete, or Law day.

CHAP. 20.

Lete, or Law day is not incident to euery Mannor, but to those onely which by speciall graunt, or long prescription, haue such libertie. This was, as it may appeare,

appeare first a special trust and confidence and commis-
sion giuen to a fewe put in trust by the Prince, as is
now to the Iustices of peace, to see men swozne to the
Prince, to take pledges and suerties in that manner of
one for another to answer for obedience and truth, to
enquire of priue conspiracies, fraies, murders, and
bloudsheddes, and to this was added the ouersight of
bread and ale, and other measures. Many times they
that be out of the homage and Court Baron of that
manor and Lordship, bee neuerthelesse attreined and
answerable to come to the Leete. This Leete is ordi-
narily kept but twice in the yeare, and that at termes
and times prescribed.

The Leete and Law day is al one, and betokeneth
word for word, *legitimum or iuridicum diem*. Law
the old Saxons called lant or lag, and so by corruption
and chaunging of Language from Lant to Leete, vn-
derstanding Day, they which keepe our full English
terme, call it yet law day.

Of the proceedinges of causes cri-
minall, and first of the Iustices
of the Peace.

CHAP. 21.

BEfore the manner of proceeding in causes criminall
can be wel vnderstode, it will be necessarie to speak
of three persons, the Iustices of peace, the Coroners,
and the Constables. The Iustices of peace be men e-
lected out of the nobilitie, higher and lower, that is the
Dukes, Marquises, Barons, knightes, Esquiers, and
Gentlemen, and of such as be learned in the Lawes,
such, and in such number as the Prince shall thinke
meete, and in whom for wisdom and discretion hee

Iustices of
peace.

put-

put-

90 The Common-welth

putteth his trust, inhabitantes within the countie: sa-
uing that some of the high Nobilitie and chiefe Magi-
strates for honours sake are put in all or in the most
of the commissions of all the shires of England. These
haue no time of their rule limitted but by commission
from the Prince alterable at pleasure.

At the first they were but 4, after 8. now they come
commonly to 30. or 40. in euery shire, either by increase
of riches, learning, or actiuitie in policie and govern-
ment. So many more being found, which haue either
will, or power, or both, are not to manie to handle the
affaires of the Common wealth in this behalfe. Of
these in the same commission be certaine named, which
bee called of the *Quorum*, in whom is especiall trust
reposed, that where the commission is given to fortie
or thirtie, and so at the last it commeth to foure or three,
it is necessarie for the performance of many affaires to
haue likewise diuers of the *Quorum*. The wordes of
the commission be such, *Quorum vos A B. C D. E F. v-
num esse volumus.*

The Iustices of the peace be those in whom at this
time for the repressing of robbers, theues, and vaga-
bonds, of priuie complots and conspiracies, of riotes,
and violences, and all other misdemeanours in the
common wealth, the Prince putteth his speciall trust.
Each of them hath authoritie vpon complaint to him
made of any theft, robberie, manslaughter, murder, vio-
lence, complots, riotes, vnlawfull games, or any such
disturbance of the peace, and quiet of the Realme, to co-
mit the persons whom hee supposeth offenders, to the
prison, and to charge the Constable or Sherife to bringe
them thither, the Gaoler to receaue them and keepe
them till he and his fellows doe meeete. A fewe lines
signed with his hand is ynough for that purpose: these
doe meeete four times in the yeare, that is in each quar-
ter

Iustices of
Quorum.

ter once, to enquire of all the misdemeanors aforesaid: at which daies the shirife, or his vnder shirife with his bailifes be there to attende vppon him, who must prepare against that time foure enquestes of xliij. yeo- men a peece of diuers hundzeds in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with al. These fve enquestes are swozne befoze them to enquire of all heretiques, traitors, thestes, murthers, manslaughteres, rapes, false moniers, extortioners, riottes, routes, forcible entries, vnlawfull games, and all such thinges as bee contrarie to the peace and good order of the Realme, and to bring in their verdict. If they among themselves vppon their owne knowledge doe finde any culpable, they cause one of the clarkes to make the bill. And if any bee there to complaine vppon any man for these faultes, he putteth in his bill, which bill is presented first to the Iustices sitting vppon the bench, to see if it be conceived in forme of lawe, which done y^e complainant doth deliuer it to one of these enquestes, & after the complainant is swozne, he declareth to the what he can, for y^e p^roofe of it. And if they find it true they do nothing but write on the backside of it, *illa vera*, as ye would say, *scriptum Verum: or accusatio iusta, or reus est qui accusatur*: Then he who is there named is called indicted. The maner of the bill is such, *Inquiratur pro domino rege*.

If they do not finde it true, they write on the backside *ignoramus*, and so deliuer it to the Iustices, of whom it is rent into peeces immediatly: he that is indicted is accompted a lawfull prisoner, and after that time looked moze streitly vnto. For this inditement is no conviction: and if hee be indicted, and bee not alreadie in Prison, the Sherife if he can finde him, bringeth him into prison: if he cannot finde him, processe is made out against him, to render himselfe prisoner, or else hee

This is not alwaies and in all places obserued, but onely concerning the graund enquest.

92 The Common-welth

The vse of Ca-
pias and exi-
gens vpon in-
ditementes is
otherwise.

They are put
to fines.

shalbe outlawed. So he is called threë times in diuers countie dayes to render himselfe to the Law. The fourth is called the exigent, by which hee is outlawed not rendzing himselfe, as yee would say: *exactus oz actus in exilium*. The outlaw loseth all his goods to the King for his disobedience. But if after he will render himselfe to answere to the lawe, and shew some reasonable cause of his absence, many times of grace his outlawrie is pardoned. These meetinges of the Iustices of peace foure times in the yeare, be called quarter sessions, oz sessions of enquirie, because that nothing is there determined touching the malefactozs, but onely the custodie of them: and this kinde of proceeding which is by inquisition of the ry. men within themselves, and their owne consciences, oz by denunciation of him that putteth in his bill to the ry. is called at the Kings suite: and the King is reckoned the one partie, and the prisoner the other. The Iustices of the peace do meeete also at other times by commaundement of the Prince vpon suspition of warre, to take order for the safetie of the shire, sometimes to take musters of harnesse and able men, and sometime to take orders for the excessiue wages of seruantes and labourers; for excesse of apparell, for vnlawfull games, for conuenticles and euill orders in alehouses, and tauernes for punishment of idle and vagabound persons, and generally, as I haue said, for the good gouernment of the shire, the Prince putteth his confidence in them. And commonlie euery eare, oz each second yeare in the beginning of Sommer oz afterwardes, (for in the warme time the people for the most parte be moze vnrulie) euen in the calme time of peace, the Prince with his Counsell chooseth out certaine articles out of penall Lawes already made for to repressse the pride and euill rule of the popular, and sendeth them downe to the Iustices

offices, willing them to looke vpon those points, and after they haue mette together, and consulted among themselves how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the law, they deuide themselves by thre or foure: and so ech in his quarter taketh order for the execution of the said articles.

And then within certaine space they meete againe and certifie the Prince or his priuie Councell, how they doe find the shire in rule and order touching those points and all other disorders. There was neuer in any common wealth deuised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes as it were in a bzidle of good order, and sooner looked vnto that they shoulde not offend, than punished when they haue offended. For seeing the chiefe amongst them, their rulers to haue this speciall charge, and doe cal vpon it, and if occasion so do present, one or two presently either punished, or sent to prison for disobedience to those olde orders and lawes, they take a feare within themselves, they amende, and doe promise more amendment. So that it is as a new forbushing of the good lawes of the Realme, and a continuall repressing of disorders, which doe naturally rest among men.

But as the inuention of this, and the vse and execution thereof is the most benefit that can be deuised for the commonwealth of England: so when it shalbe misused, dissembled with, or be contemned, & be done *pro forma tantum*, & as they term it in France, par mainere d'acquit only, it wil be the present ruine (though not at the first perceiued) of the commonwealth. Of which the fault may be as well in the commanders for not making good choice, what and how they commaund, as in the commaunded, for not executing that which is commaunded.

Of hue and crie and recognisaunce
taken vppon them that may
giue euidence.

CHAP. 22.

By the olde lawe of England, if any theft, or robberie be done, if hee that is robbed, or hee that seeth or perceiueth that any mā is robbed do leue hue and crie, that is to say, do crie and call for aide, and say that a theft or robberie is done contrarie to the Princes peace and assurance: the Constable of the village to whom he doth come, and so make that crie, ought to raise the parish to aide him and sake the thæfe, and if the thæfe be not found in that parish, to goe to the next and raise that Constable, and so still by the Constables and them of the Parish one after another. This hue and crie from parish to parish is caried, till the thæfe or robber be found. That parish which doth not his dutie, but letteth by their negligence the thæfe to depart, doth not onely pay a fine to the king, but must repay to the partie robbed his dammages. So that euerie English man is a sergeant to take the thæfe, and who sheweth himselfe negligent therein, doth not only incurre euill opinion therefoze, but hardly shall escape punishment: what is done with the thæfe or robber when he is taken, I shall shew you hereafter. The same manner is followed if any man bee slaine, for straight the Furtherer is pursued of euery man til he be taken. So soone as any is brought to the Iustices of peace by this hue or crie, by the Constable or any other who doth pursue the malefactor, hee doth examine the malefactor, and writeth the examination and his

con.

confession: then he doth binde the partie that is robbed, or him that sueth, and the Constable, and so many as can giue euidence against the malefactor to be at the next sessions of gaole deliuerie, to giue their euidence for the Quene. He bindeth them in recognisance of x. pound, xx. pound, xxx. pound, xl. pounce. or C. pound, according to his discretion, and the qualitie of the crime: which certified vnder his hand, is leued vpon the recognizance, if they faile of being there.

Of the Coroner.

CHAP. 23.

But if any man, woman, or child, be violently slaine, the murthrer not known, no man ought or dare burie the bodie befoze the Coroner hath seene it. The Coroner is one chosen by the Prince of the meaner sort of gentlemen, and for the most part a man seene in the lawes of the Realme, to execute that office. And if the person slaine (slaine I call here, whosoever he be, man, woman or Childe that violently commeth to his death, whether it be by knife, poison, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried befoze the Coroner do come (which for the most part men dare not doe) he doth cause the bodie to be taken vp againe, and to be searched, and vppon the sight of the bodie so violently come to his death he doth empanell an enquest of twelue men or mo, of those which come next by, be they strangers or inhabitants, which vppon their othes, and by the sight or view of the bodie, and by such informations as they can take, must search howe the person slaine came to his death, and by whom as the doer or causer thereof.

These are not inclosed into a streit place, (as I folde befoze of other enquestes) but are suffered to goe at large, and take a day, sometime after xx. or xxx. daies, more or lesse, as the fact is more euident, or more kept close, to giue their euidence, at which day they must appeare there againe befoze the said Coroner to giue their verdict. So sometime y person to haue slaine himselfe, sometime the brother, the husband, the wife, the sister, some of acquaintance or stranger, such as God wil haue reueiled, be taken. For whosoever they do finde as guiltie of the murther, he is streight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as ye shal see hereafter.

The empanelling of this enquest, and the view of the bodie, and the giuing of the verdict, is commonly in the streete in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of euery subiect by violence is accounted to touch the Crowne of the Prince, and to be a detriment vnto it, the Prince accounting that his strength, power, and Crowne doth stande and consist in the force of his people, and the maintenance of them in securitie and peace.

Of the Constables.

CHAP. 24.

These men are called in the elder booke of our lawes of the realme *Custodes pacis*, and were at the first in greater reputation than they be now. It may appeare that there was a credit giuen vnto them not altogether vnlike to that which is now giuen to the Iustices of peace. To this day if any affraie chaunce
to

to be made, the Constables ought and will charge them that be at debate, to keepe the Princes peace, and who-soener refuseth to obey the Constable therein, all the people wil set straight vpon him, and by force make him to render himselfe to be ordered. Likewise if any be suspected of theft, or receiuing, or of murther, or of manslaughter, the Constable may take such persons, yea enter into any mans house with sufficient power to searche for such men till hee finde them: and if hee see cause, keepe the suspected persons in the stocks, or custodie, till he bring them before a Justice of the peace to be examined. But for so much as euery little Village hath commonly two Constables, and many times artificers, labourers, and men of small abilitie be chosen vnto that office, who haue no great experience, nor knowledge, nor authoritie, the Constables at this present (although this they may doe vpon their owne authoritie) yet they seme rather to be as it were the executors of the commaundement of the Justices of peace. For the Justice of peace as soone as he vnderstandeth by complaint that any man hath stolen, robbed, slaine, or any seruant, or labourer without licence, hath departed out of his masters seruice, or any y liueth idle and suspectly, knowing once in what parish hee is, hee writeth to the Constable of the Parish, commaunding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, hee commiteth him to the same Constable to conueye him further to the Princes gaole, where the partie must lie till the Justices of peace doe meete either at their quarter sessions, or at their gaole deliuerie, and that the lawe hath either condemned or acquitted him. These Constables are called in some places Headborowes, in some places Tithingmen, and

One or two
constables,
headborowes:
or tithingmen

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Kinningstable
is Regia virgu-
la, the Kinges
rod or wand,
signifying the
Kinges power
or authoritie,
a representa-
tion whereof
is the vse of
maces & white
staues by offi-
cers in the co-
monwealth.

be like to them, who are called Consuls in many towns and villages in Fraunce. The Constables are commonly made and sworne at the Lates of the Lordes, chosen thereto by the homage, and they keepe that office sometime two, three, or foure yeares, more or lesse, as the parish doth agree. What headborough doeth betoken it is easily known, our language doeth declare him as the head or chiefe of the borough or village: likewise tithingman is the chiefe of the tithing. Constable seemeth to me to come of our old english word Kinning, which is Kinningstable, as ye would say, a man established by the king, for such things as appertaine to pleas of the crowne, and conseruation of the kings peace, and as I said at the first, were in some more reputation, approaching to that authoritie, which the Iustices of peace now doe hold.

*Of the Sessions of Gaole deliuerie, and
the definitiue proceedings in
causes criminall.*

CHAP. 5.

HOWE theues and murtherers and other malefactorz against the crowne and the peace are take and brought into holde to answer to iustice, partly by hue and crie, partly by information, and partly by the diligence of the Iustices of peace and the Constables: and howe at the quarter Sessions they bee indicted, or else by the Coroners, ye haue hearde before. Enditement (as yee may perceyue by that which is also gone before) is but a former iudgement of xij. men which be called enquirers, and no definitiue sentence, but that which in latin is called *præiudicium*, it doeth but shewe what opinion the countrey hath of the malefactor: and therefore

therefoze commonly men be indicted absent, not called to it, noz knowing of it. For though a man be endicted, yet if when he come to the araynement, there be no man to pursue farther, noz no evidence of witnesse or other triall and indices against him, he is without difficultie acquitted. No man that is once indicted can be deliuered without arainement, For as twelue haue giuen a pzeiudice against him, so twelue againe must acquite or condemne him. But if the prisoner be not indicted, but sent to prison vpon some suspition or suspitious behauiour, & none do pursue him to the enditement, first being proclaimed thus, A. B. prisoner standeth here at the barre, if any man can say any thing against him, let him now speake, for the prisoner standeth at his deliuerance: if no man doe then come. hee is deliuered without anie further processe or trouble, agreeing first with the gaoler for his fees. And these be called acquitted by proclamation. Twice in euerie yeare, the one is commonly in lent what time there is vacation from pleading, in Westminster hall, the other is in the vacation in summer, the Prince dooth sende downe into euerie shire of Englande certaine of his Judges of Westminster hall, and some Sergeantes at the lawe with commission to heare and determine iointlie with the Iustices of the peace all matters criminall and all prisoners which be in the gaoles. These Judges doe goe from shire to shire till they haue done their circuit of so manie shires as be appointed to them for that yeare: at the ende of the terme going befoze their circuit, it is witten and set vp in Westminster hall on what day and in what place they will be. That day there meeteth all the Iustices of the peace of that shire, the Sherife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer.

100 The Common-wealth

The sherife hath readie for criminall causes (as I writte before at the Sessions of inquirie) four, five or six enquestes readie warned to appeare that day to serue the Prince, and so many more as hee is commaunded to haue readie to goe in ciuill matters betwixt priuat men, which they call Nisi prius, because that worde is in the writte.

In the towne house, or in some open or common place, there is a tribunall or place of iudgement, made aloft vpon the highest bench, there sitteth the two Judges, which be sent down in commission, in the middell. Next them on ech side sitte the Iustices of peace, according to their estate and degree. On a lower bench before them, the rest of the Iustices of peace, and some other Gentlemen or their Clarkes. Before these Judges and Iustices there is a table set beneath, at which sitteth the Custos Rotulorum, or keeper of writs, Thercheto, the vnder sherife, and such clarkes as doe write. At the ende of that table there is a barre made with a space for the enquestes, and twelue men to come in when they are called, behinde that space another bar, and there stand the prisoners which be brought thether by the Bayler, all chayned one to another. Then the Cryer cryeth, and commaundeth silence. One of the Judges briefly telleth the cause of their comming, and geueth a good lesson to the people. When the prisoners are called for by name, and bidden to answer to their names. And when the Custos rotulorum hath brought forth their endictments, the Judges doe name one or two, or three of the prisoners that are indicted, whom they will haue arraigned. Where the clarke speaketh first to one of the prisoners: A. B. come to the barre, holde vp thy hand. The Clarke goeth on: A. B. thou by the name of A. B. of such a towne, in such a countie, art endicted, that such a day, in such a place, thou hast stolen
with

with force and armes an horse, which was such ones, of such colour, to such a valor, and carried him away feloniously, and contrarie to the peace of our soueraigne Lady the Queene. What sayest thou to it, art thou guiltie or not guiltie? If he will not answer, or not answer directly guiltie or not guiltie, after he hath bene once or twice so interrogated, he is iudged mute, that is, dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: he is layd vpon a table, and another vpon him, and so much waight of stones or lead laide vpon that table, while as his body be crushed, and his life by that violence taken from him. This death some strong and stout harted man doeth chuse, for being not condemned of felonie, his bloud is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be foreiudged, that is, condemned for a felon by the lawe. If hee confesse the Indictment to bee true, then when he is arraigned, no twelue men go vpon him, there resteth but the Judges sentence, of the paine of death.

If he pleade not guiltie, as commonly all thæues, robbers and murtherers doe, though they haue confessed the fact befoze the Justice of the peace that examined them, though they be taken with the maner, which in Latine they call in flagranti crimine, howsoeuer it be, if he pleade there not guiltie, the Clarke asketh him how he will be tried, and telleth him he must say, by God and the Countrey, for these be the words formall of his triall after indictment, and where the Prince is partie: if the prisoner doe say so, I will be tried by God and the Countrey, then the Clarke replyeth, Thou hast bene indicted of such a crime, &c. Thou hast pleaded not guiltie: being asked how thou wilt be

tried, thou hast answered by God and by the Countrey. Doe these honest men that be come here, be in the place and stead of the Countrey: and if thou hast any thing to say to any of them, looke vpon them well and nowe speake, for thou standest vpon thy life and death. Then calleth he in the first Iuroz. B. C. come to the booke, and so giveth him an othe to goe vprightly betwixt the Prince and the prisoner, &c. If the prisoner objecteth nothing against him, he calleth an other, and so an other, till there be xij. or above: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are unknownen to him, nor they know not him, as I said beynge substantiall yeomen, that dwell about the place, or at the least in the hundred, or nere where the felonie is supposed to be committed, men acquainted with daily labour and travaile, and not with such idle persons as be readie to doe such mischiefes.

When the enquest is full, and the prisoner hath objected nothing against them, as in dedde sellome he doeth, for the cause above rehearsed: The clarke saith to the cryer, countes, (in French as ye would say reken) and so nameth all those that be on the quest. The crier at every name crieth aloud, one, then two, three, foure, and so till the number be full of twelue or more, and then saith good men and true: and then saith aloud: If any can giue evidence, or can say any thing against the prisoner, let him come now, for he standeth vpon his deliuerance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Iustices of peace: he (if he be there) deliuereth by the examination which he tooke of him and vnderneath the names of those whom he hath bound to giue evidence: although the malefactor hath confessed the crime to the Iustice of the peace, and that appeare by his hande
and

and confirmation, the twelue men will acquite the prisoner, but they which should giue evidence pay their recognizance. Nowbeit this doth seldome chaunce, except it be in small matters, and where the Justice of peace, who sent the prisoner to the gaole, is away. If they which be bound to giue evidence come in, first is read the examination, which the Justice of peace doeth giue in: then is heard (if he be there) the man robbed what he can say, being first swozne to say truth, and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say any thing, being swozne one after an other to say truth. These be set in such a place as they may see the Judges and the Justices, the enquest and the prisoner, and heare them, and bee heard of them all. The Judge after they be swozne, asketh first the partie robbed, if he knowe the prisoner, and biddeth him loke vpon him: he saith yea, the prisoner sometime saith nay. The partie pursuiuant giueth good ensignes, *verbi gratia*, I knowe thee well ynough, thou robbedst me in such a place, thou beatedst mee, thou tookest my horse from me, and my purse, thou hadst then such a coate and such a man in thy companie: the thiefe will say no, and so they stand a while in altercation, then he telleth all that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can giue any *indices* or tokens which wee call in our language evidence agaynst the malefactor. When the Judge hath heard them say ynough, he asketh if they can say any more: if they say no, then he turneth his speache to the enquest. Good men (saith he) ye of the enquest, ye haue heard what these men say agaynst the prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your othe, and to your duetie, and do that which God shall put in your mindes
to

to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of 9. or thre prisoners: For if they should be charged with moze, the inquest will say, my Lorde, wee pray you charge vs with no moze, it is enough for our memorie. Many times they are charged but with one or two. At their departing, they haue in writing nothing given them, but the enditement, the Clarke repeating to them the effect of it, and shewing moze, that if they finde him guiltie, they shall enquire what goods, landes, and tenementes the said person had at the time of the felonie committed: and if they finde any, they shall bring it in: if no, they shall say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a Bailife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or would heare againe some of them that giue euidence, to interrogate them moze at full, or if any that can giue euidence come late: it is permitted that any that is sworn to say the trueth, may be interrogated of them to enforce their consciences. This is to be vnderstood, although it will seeme straunge to all nations that doe vse the ciuill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is done openlie in the presence of the Judges, the Iustices, the enquest, the prisoner, and so many as will or can come so neare as to heare it, and all depositions and witnessses given aloud, that all men may heare from the mouth of the depositeors and witnessses what is saide. As of this, so is it of all other prisoners after y same sort, By that time
that

that the enquestes for the prisoners be dispatched, it is commonly dinner time, the Judges and Justices goe to dinner, and after dinner returne to the same place: if the enquest be not readie for the prisoners, they goe to some other enquests of *Nisi prius*, which be ciuill matters and priuate, to driue out the time. The enquestes haue no sooner agreed vpon their charge one way or other, but they tell the Waylife, and pray to bee heard, and considering that they bee themselves all this while as prisoners as I saide before, it is no maruell, though they make expedition. The prisoners be sent for a gayne to the barre, the enquest which hath agreed, is called for each one of the Jurie by his name, to which he answereth. Then the Clarke asketh if they be agreed, and who shall speake for them. One or mo saith yea. He that speaketh for them all is called the foreman, and commonly it is he that is first swozne: then the prisoner is bidden to holde vp his hand. The Clarke saith vnto him, Thou art endicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, beyng asked howe thou would be tryed, thou saydest by God and thy countrey. These honest men were giuen to thee by God and thy Prince for thy Countrey: Hearken what they say. Then he asketh of the enquest, what say you? Is hee guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadlie, the other acquiteth the prisoner. So that neither Judge nor Justice hath to doe, or can reuerse, alter or chaunge that matter, if they say guiltie. The Clarke asketh what landes, tenementes, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonlie it is aunswered, that they knowe not, nor it shall not greatly neede, for the Sherife is diligent ynough to enquire of that, for the Princes and

his owne aduantage, and so is the ercheato2 also.

Of him whom the twelue men pronounce guiltie, the Judge asketh what he can say for himselfe: if he can reade, he demaundeth his Clargie. For in many felonies, as in theft of Oxen, Sheepe, Honey, or other such thinges, which be no open robberies by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Lawe, that for the first fault the felon shalbe admitted to his Clargie, for which purpose the Bishop must send one with authoritie vnder his seale to be Judge in that matter at euery gaole deliuerie. If the condemned man demaundeth to be admitted to his booke, the iudge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can (God knoweth sometime verie slenderly :) then he asketh of the Bishops commissarie, *legit vt clericus?* The Commissarie must say *legit* or *non legit*, for these bee wordes so2mall, and our men of Law be very precise in their wordes so2mall. If he say *legit*, the Judge proceedeth no further to sentence of death: if he say *non* the Judge forthwith, or the next day proceedeth to sentence, which is done by word of mouth onely: Thou A. hast bin endicted of such a felony, and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrie, they haue found thee guiltie, thou hast nothing to say for thy selfe, Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hange till thou be dead. Then hee saith to the Sherife, Sherife do execution: hee that claimeth his Clargie, is burned forthwith in the presence of the Judges in the brawne of his hande with a hot yron marked with the letter T. for a thiefe, or M. for a mansleaver, in cases where Clargie

gie is admitted, and is deliuered to the Bishops officer to be kept in the Bishops pryson, from whence after a certaine time by an other enquest of Clarkes he is deliuered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guilty is acquitted forthwith and discharged of pryson, paying the gaolers fees: and if he know any priuate man who purchased his inditement, and is able to pursue it, he may haue an action of conspiracie against him, and a large amendes: but that case chaunceth seldome.

The deliuerie to the Bishops prison, and the purgation is taken away by statute.

They must be two at the least that conspired.

Certaine orders peculiar to England, touching punishments of malefactors.

CHAP. 26.

For any felonie, manslaughter, robberie, murther, rape, and such capitall crimes as touch not treason, and *lesam maiestatem*, we haue by the Lawe of England no other punishment, but to hang til they be dead: when they be dead, euery man may burie them that will, as commonly they be. Heading, tormenting, dismembzing, eyther arme or legge, breaking vpon the wheele, empaling, and such cruell torments, as be vsed in other nations by the order of the law, we haue not: and yet as few murthers committed as any where: nor it is not in the Judges or the Iustices power, to aggravate or mitigate the punishment of the Law, but in the Prince onely and his priue Counsell, which is marvellous seldome done. Yet notable murtherers many times by the Princes commaundement, after they be hanged with corde till they be dead, be hanged with chaines while they rotte in the ayre.

If the wife kill her husband, she shalbe burned alive. If the seruant kill his master, he shall be drawen on a hurdle to the place of execution: it is called petit treason. Impoysoners, if the person die thereof, by a new law made in king Henrie the eights time, shalbe boyled *Quare.* to death: but this mischiefe is rare, & almost unknowen in England. Attempting to impoyson a man, or laying awayt to kil a man, though he wound him dangerously, yet if death follow not, is no felonie by the law of England, for the Prince hath lost no man, and life ought to be geuen we say, but for life onely.

And againe, when a man is murdered, all be p^rincipals, and shall die, euen he that doeth but hold the candle to geue light to the murtherers. For mitigation and moderation of paines, is but corruption of Iudges, as we thinke. Likewise, torment or question, which is vsed by the order of the ciuill law, and custome of other countreies, to put a malefactor to excessive paine, to make him confesse of himselfe, or of his felowes, or complices, is not vsed in England, it is take for seruile. For what can he serue the commonwealth after as a freemaⁿ, who hath his body so haled and tormented, if he be not found guiltie, and what amends can be made him? And if he must die, what crueltie is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the iudgement, the triall of the twelue goeth not vpon him: if he denie the fact, that which he said before, hindereth him not. The nature of Englishmen is to neglect death, to abide no torment: And therefore he will confesse rather to haue done any thing, yea to haue killed his owne father, than to suffer torment: for death our nation doeth not so much esteeme as a meane torment. In no place shall you see malefactor goe more constantly, more assuredly, & with lesse lamentation to their death, than in England.

Again,

Againe, the people not accustomed to see such cruell tormentes, will pitie the person tormented, and abhorre the Prince and the Judges, who should bring in such crueltie amongst them, and the twelue men the rather absolue him. There is an olde lawe of England, that if any gaoler shall put any prisoner beyng in his custodie to any torment, to the intent to make him an approuer, that is to say, an accuser, or Index of his complices, the Gaoler shall die therefore as a felon. And to say the trueth, to what purpose is it to vse torment? For whether the malefactor confesse or no, and whatsoeuer he saith, if the enquest of twelue doe finde him guiltie, he dieth therefore without delay. And the malefactor, seeing there is no remedie, and that they be his Countrey men, and such as he hath himselfe agreed vnto it, doe finde him worthe death, yeldes for the most part vnto it, and doeth not repine, but doeth accomodate himselfe to aske mercie of God.

The nature of our Nation is free, stout, hault, prodigall of life and bloud: but contumelie, beatings, seruitude and seruite torment, and punishment, it wil not abide. So in this nature and fashion, our ancient princes, and Legislatores haue nourished them, as to make them stout hearted, couragious, and souldiours, not villaines and slaues, and that is the scope almost of all our policie.

The twelue as soone as they haue geuen their verdict are dismissed to goe whether they will, and haue no maner commoditie and profite of their labour and verdict, but onely doe seruice to the Prince and Common wealth.

110 The Common-wealth

*Of treason, and the triall which is vsed
for the higher nobilitie and Barons.*

CHAP. 27.

THe same order touching triall by enquest of twelue men, is taken in treason, but the paine is more cruell. First to be hanged, taken downe aliue, his bowels taken out, and burned befoze his face, then to be beheaded, and quartered, and those set vp in diuers places. If any Duke, Marques, or any other of the degræ of a Baron, or above, Lord of the Parlement be appeached of treason, or any other capitall crime, he is iudged by his peeres and equals: that is, the yeomanrie doeth not go vpon him, but an enquest of the Lords of the Parlement, and they geue their voyce, not one for all, but ech seuerally as they doe in Parlement, beginning at the yongest Lord. And for Iudge one Lord sitteth, who is Constable of England for that day. The iudgemēt once geuen, he breaketh his staffe, and abdicateth his office. In y rest there is no difference from that aboue written.

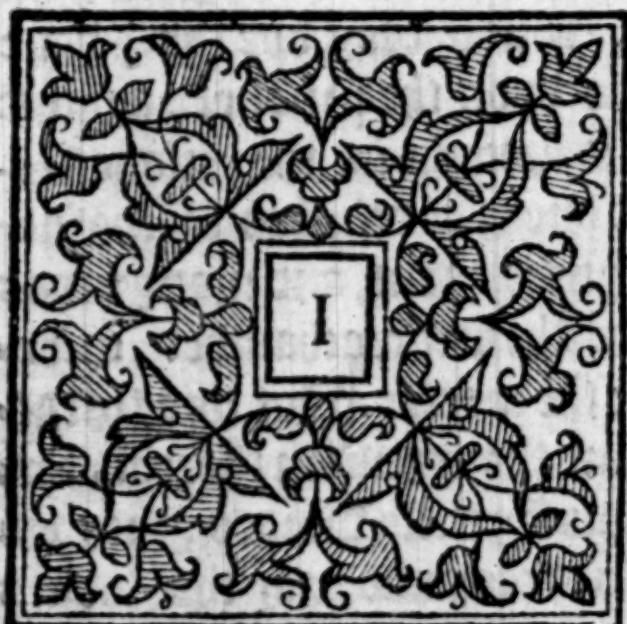
Or rather,
high steward
of England.

THE

THE THIRDE BOOKE.

Of that which in other Countreys is called Appellation, or Prouocation, to amend the iudgement, or sentence definitiue, which is thought vniustly geuen in causes criminall.

CHAP. I.



If the enquest of xij. men do seem to the Iudges and the Iustices to haue gone too violently against the euidence geuen in matters criminall, either it is that vpon slender euidence they haue pronounced him guilty, whom the Iudges and most part

of the Iustices thinkes by the euidence not fully proued guiltie, or for some other cause, doe thinke the person rather worthie to liue than to die. The enquest is neuer thelesse dismissed: but when the Iudges should pronounce the sentence of death vpon the person found guiltie, hee will deferre it, which is called, to repzine the prisoner, (that is to say, to send him againe to prison) and so declare the matter to the Prince, and obteyneth after a time for the prisoner his pardon: and as for prouocation or appeale, which is vsed so much in other countreys, it hath no place in England, after sentence geuen by the twelue, whereby the person is found guiltie or not guiltie: but without that repzining, the sentence is straight put in execution by the Sherife.

And

And if they either escape, or die another death, the sherife escapeth not to pay a great fine and raunsome at the princes mercie: if hauing pregnant euidence neuer, thelesse, the twelue doe acquite the malefactor, which they will doe sometime, and especially if they perceiue either one of the Iustices or of the Judges, or some other man to pursue too much, and too maliciously the death of the prisoner, and doe suspect some subornation of the witnes, or of them which doe geue euidence, and sometime if they perceiue the Judge would haue y^e prisoner escape, and in repeating the euidence do geue them thereof some watchword. But if they doe (as I haue said) pronounce not guiltie vpon the prisoner, against whom manifest witnesse is brought in, the prisoner escapeth: but the twelue not onely be rebuked by the iudges, but also threatned of punishment, and many times commaunded to appeare in the Starrechamber, or before the priuie counsell for the matter. But this threatening chaunceth oftener than the execution thereof, and the twelue answere with most gentle wordes, they did it according to their consciences, and pray the Judges to be good vnto them, they did as they thought right, and as they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the Queene nowe) that an enquest for pronouncing one not guiltie of treason contrarie to such euidence as was brought in, were not onely imprisoned for a space, but an houghe fine set vpon their heads, which they were faine to pay: An other enquest for acquiting an other, beside paying a fine of money, put to open ignominie and shame. But those doinges were euen then of many accounted verie violent, tyrannicall, and contrarie to the libertie and custome of the realme of England. Wherefore it commeth verie sel-dome in vse, yet so much at a time the enquest may be corrupted,

corrupted, that the Prince may haue cause with iustice to punish them: For they are men, and subiect to corruption and parcialitie, as others be.

What remedie is, if the sentence be thought vniustlie giuen.

CHAP. 2.

In causes ciuill there is another order: for if after the matter be pleaded to the issue, & the twelue men thereupon impaneled, the euidence brought and pleaded before them on both the parties, the twelue seme to be partiall, and to haue giuen sentence contrarie to the euidence shewed vnto them: the partie graued may bring against them, and the partie for whom the sentence is giuen, a writ of attaint: and whereas before upon the first quest commonlie they all be yeomen, now upon this attaint must goe xxiij. gentlemen dwelling within the shire, and twelue at the least of the hundred where the land lyeth. The matter is pleaded againe before the same Judges. The partie defendant is not onely now he who claineth the land, but also all and euery of the yeomen, who by their verdict did giue it him.

There must in the attaint no more euidence be brought in, but onely that which was brought in and alledged before the first enquest. And if this second enquest of foure and twentie gentlemen do adiudge as the first did, the plaintife shall not onely lose the lande, but also pay a fine to the Prince, and damages to the party. If this seconde enquest doe finde that the first enquest hath gone partially, and against the euidence brought in before them, the first enquest is called attainted,

No more euidence on the behalte of the plaintife, but of the defendant there may.

The statute of
23, Henric 8.
doth not abo-
lish common
law, but giueth
a more profita-
ble for the
plaintife.

and accounted as perjured and infamed. The Prince
had befoze the waste of all their landes and possessions
with other punishments, which at this present by a
law made by Parliament in the time of King Henry
the eight is abolished, and now by that law or acte of
Parliament, beside other punishment; each of the
quest attaintes payeth vnto the Prince and Partie five
pound, if it be vnder fortye pounds: & if aboue, then twē-
tie pounds. Attaints be verie seldom put in vze, partly
because the gentlemen will not meete to flander and
deface the honest yeomen their neighbours: so that of a
long time, they had rather pay a meane fine than to ap-
peare and make the enquest. And in the meane time
they will intreate so much as in them lyeth the parties
to come to some composition and agreement among the
selues, as lightly they do, except either the corruption
of the enquest be too euident; or the one partie is too ob-
stinate and headstrong. And if the gentlemen do ap-
peare, gladlier they will confirme the first sentence, for
the causes which I haue said, than goe against it. But
if the corruption be too much euident, they will not
sticke to attaint the first enquest: yet after the gentle-
men haue attainted the yeomen, if befoze the sentence
be giuen by the Judge (which ordinarily for a time is
differred) the parties be agreed, or one of them be dead,
the attaint ceaseth.

If at any time befoze the sentence be giuen or put
in execution, there bee found some such error in the
writ, in the proccesse, or forme (as our lawyers be verie
pretise and curious of their formes) that it may be reuo-
cable, it is brought afresh to the disputation by a writ
of error, and all that is done reversed. But that is
common to all other Countries, where the ciuill lawe
is vsed, which they call *de nullitate processus*, and serueth
both in England and in other places aswell in causes
criminal

criminall, as ciuil. Other kinde of appellation to re-
 uoke proceſſes, and to make them of ſhort, long, of
 long, infinite, which is vſed by the ciuill law, we haue
 not in our common law of England. By ſupplicati-
 on to the Prince and complaint to the Chaunceloz bp-
 pon ſuppoſal of loſſe or lack of euidence, or too much fa-
 uour in the countrey, and power of the aduerſarye,
 there is in our countrey as well as theirs both ſtopping
 and prolonging of Juſtice. For what will not baſie
 heades and louers of trouble neuer being ſatiſfied, in-
 uent in any Countrey to haue their deſire, which is
 to bere their neighbours, and to liue alwaies in diſqui-
 et? Men euen permitted of God like flies, and liſe, and
 other bermine to diſquiet them who would imploye
 themſelues vpon better buſineſſe and more neceſſarie
 for the Common wealth: theſe men are hated, and
 feared of their Neighbours, loued and aided of them
 which gaine by proceſſes, and ware fatte by the expence
 & trouble of other. But as theſe men ordinarily ſpende
 their owne thrift, and make others againſt their wils
 to ſpend theirs: ſo ſometime being thoroughly knowne,
 they do not onely liue by the loſſe like euill huſbandes,
 but beſide rebuke & ſhame, by the equity of the Prince
 and Courtes ſoueraigne, they come to be extraordina-
 rily puniſhed, both corporally, and by their purſe, which
 thing in my minde is as royall and princely an act, and
 ſo beneficiall to the Common wealth, as in ſo ſmall a
 matter a King or Quene can doe, for the reſpos and
 good education of their ſubiectes.

Of that which in England is called appeale, in other places accusation.

CHAP. 3.

If any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I haue choice to cause him to be indicted, by giuing information to the enquest of enquirie, (although he chaunce to escape the Constable or Iustices handes, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or else within a yeare and a day I may enter my appeale, that is mine accusation against him. If I began first to pursue him by information or denunciation to enditement, I am now no partie but the Prince, who for his dutie to God and his common wealth and subiectes, must see iustice executed against all malefactors and offenders against the peace, which is called Gods and his, and doth in such manner as I haue said before. If I leaue that and will appeale, which is, profer my accusation against him who hath done to me this iniurie, the defendand hath this advantage, to put himselfe to the Iurie, which is to that which before is said to haue that issue and triall by God and his countrie, whereof the fashion I haue at large declared: or to demaunde the triall by battle, wherein both the parties must either themselves in person, or else find other for them, who bee called in our Law Champions or Campions, some doth interprete them ἀθληταί, because they be men chosen, fat, lustie, fit to the feat, or as the French doe terme them adroits aux armes, which shall fight it out by μονομαχία, or as now they doe call

In appeale the battle is tried by the parties onely, and in writs of right by champions.

call it *duellum*, or the Campe, which shall haue all thinges equall: but according as Mars giueth the victorie, so the Law is iudged, the one as *peractus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more dangerous and equall, for the one or the other must die. So it is not in the graund assise, for the *reus* or defendant is onely in danger of death. Short it is, from day to sunne set, the quarell is ended, or sooner who hath the better fortune. This seemeth verie military (as in maner all our pollicie of England) and to haue as small to doe with Lawyers as with Whistions, quicklie to dispatche, and for the rest to returne, each man to his businesse, to serue the Common wealth in his vocation. The Popes of Rome, and men of the Church who of long time haue had dominion in our consciences, and would bring thinges to a more moderation, haue much detested this kinde of triall and iudgement. as reason is euery man misliketh that which is not like to his education, and cold reasoning by Theologie and Philosophie: they I say much mislike manie thinges done necessarily in whot policie. At the least a common wealth militarie must aduenture many thinges to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and in their studies. Howsoever it be, this kinde of triall of long time hath not bin vied. So that at this time wee may rather seeke the experience of it out of our histories of time passed, than of any viewe or sight therof, of them which are now alieue. Neuerthelesse the Law remaineth still, and is not abolished, and if it shall chaunce the murtherer or manslayer (the one we call him that lieth in waite, and as they terme it in French *de guet appendant* killeth the man, the

The battle or
Iurie is at the
election of the
defendant.

other who by casuall fallinge out and todayne debate and choler both the same which way soeuer it be done) if hee that hath slaine the man, hath his pardon of the Prince, as occasion or the fauour of the Prince may so present that he may haue it, yet the partie griued hath these two remedies, I say to require iustice by grand assise, or battle vppon his appeale & priuate reuenge, which is not denyed him. And if the defendant either by great assise or by battle bee conuicted vpon that appeale, hee shall die, notwithstanding the Princes pardon. So much fauourable our Princes be, and the Law of our Realme to iustice and to the punishment of blood violently shed.

Of the court of Starre Chamber.

CHAP. 4.

There is yet in Englande an other Court, of the which that I can vnderstand ther is not the like in any other countrie. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and those daies when the Law is exercised in Westminster hall, which as I haue said, is but at certaine times and Termes) euery weeke once at the least (which is commonly on Fridaies, and Wednesdaies, and the next day after that the Terme both ende) the Lorde Chauncelloz, and the Lordes, and other of the priue Counsell, so many as wil, and other Lordes and Barons which be not of the priue Counsell, and be in the towne, and the Judges of England, specially the two chiefe Judges, from ix. of the clocke til it be xi. do sit in a place which is called the Starre chamber, either because it is full of windowes, or because at the first all the

the roose thereof was decked with images of starres gilted. There is plaintes heard of riots. Riot is called in our English terme oꝛ speech, where any number is assembled with force to do any thing: and it had the beginning, because that our being much accustomed either in foꝛreine wars, in Fraunce, Scotland, oꝛ Irelande, oꝛ being ouermuch exercised with ciuill warres within the Realme (which is the fault that falleth oꝛdinarily amongst bellicous nations) whereby men of warre, Captaines and Souldiers become plentiful: which when they haue no externe seruice where with to occupie their busie heads and hands accustomed to fight and quarell, must needs seke quarrels and contentions amongst themselves, and become so readie to oppresse right among their Neighbours, as they were wont befoꝛe with praise of manhood to bee in resisting iniurie offered by their enemies. So that our Nation vsed hereunto, and vppon that moze insolent at home, and not easie to be gouerned by Law and politike oꝛder, men of power beginning many frayes, and the stronger by factions and parties offering too much iniurie to the weaker, were occasions of making good Lawes. First of retainers, that no man should haue aboue a number in his Liuerie oꝛ retinue: then of the enquire of routes and riots at euerie Sessions, and of the lawe whereby it is prouided that if any by force oꝛ by riot enter vpon any possessions, the Iustices of the peace shall assemble themselves & remove the force, & within certaine time enquire thereof. And further, because such thinges are not commonlie done by meane men, but such as be of power and force, & be not to be dealt withall of euerie man, noꝛ of meane Gentlemen: if the riot be found & certified to the Kings Counsell, oꝛ if other wise it bee complained of, the partie is sent foꝛ, and he must appeare in this starre

Sent for by
Sub poena.

chamber, seeing (except, the presence of the Prince onely) as it were the maiestie of the whole Realme befoze him, being neuer so stout, he will be abashed: and being called to aunswere (as hee must come of what degree soeuer he be) he shall be so charged with such grauitie, with such reason and remonstrance, and of those chiefe personages of England, one after another handeling him on that sort, that what courage soeuer hee hath, his hart will fall to the ground, and so much the more, when if he make not his answere the better, as seldome he can so in open violence, he shall be commaunded to the Flæte, where he shall be kept in prison in such sort as these Judges shall apppoint him, lie there till he be wearie aswell of the restraint of his libertie, as of the great expences, which he must there sustaine, and for a time bee forgotten. Whiles after long suite of his friendes, hee will be glad to be ordered by reason. Sometime as his desertes be, he payeth a great fine to the Prince, besides great costes and dammages to the partie, and yet the matter wherefoze he attempteth this riot and violence is remitted to the common Lawe. For that is the effect of this Court to bzidle such stout noble men, or Gentlemen which would offer wrong by force to any manner men, and can not be content to demaund or defend the right by order of Law. This court began long befoze, but tooke greate augmentation and authoritie at that time that Cardinall Wolsey Archbishoppe of Yorke was Chaunceloz of Englande, who of some was thought to haue first deuised y^e Court, because that he after some intermission by negligence of time, augmented the authoritie of it, which was at that time maruellous necessarte to do, to repress the insolencie of the noble men and Gentlemen of the North partes of England, who being farre from the King and the seat

The Court of the
 Admirall & the
 High Court of Admirall

seate of iustice made almost as it were an ordinarie warre among themselves, and made their force their Lawe, banding themselves with their tenants and seruantes to doe or reuenge iniurie one against another as they listed. This thing seemed not supportable to the noble prince King Henric the eight: and sending for them one after another to his Court to answer before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and bin well disciplined as well by wordes, as by flecting a while, and thereby their purse and courage somewhat asswaged, they began to range themselves in order, and to vnderstand that they had a Prince who would rule his subiectes by his lawes and obedience. Sith that time this court hath bin in more estimation, and is continued to this day in manner as I haue said before.

The Judges of this Court are the Lord Chauncel-
lor, the Lord Treasorer, al of the Quenes Maiesties
Counsell, the Barons of this land.

The officers therein, are a Clarke, three Attur-
neis, an Examino.

The Clarke keepeth the records, rules, entries, or-
ders, and decrees, made in this Court.

The three Attur-
neis are for the plaintife, and for the
defendant to frame their complaints, and answers,
and make their matter apt to be heard for the Lords.

The Examino taketh the depositions of the wit-
nesses of both sides to the prooue or disprove of the
cause.

The order of proceeding to iudgement is by assent
of voices, and open yielding their minde in court, the
maior part being preferred for sentence.

The punishment most vsuall, is imprisonment, pil-
lorie, a fine, and many times both fine and impri-
sonment.

Comment.

The proceſſe is a ſubpena, an attachment, a proclamation of rebellion, and a commiſſion of rebellion.

The ſubpena is in manner of a libell or precept.

The Proclamation and commiſſion of rebellion ſerveth when the partie is ſubbozne, having made con- tempt, and commeth not in by the former proces.

The Meſſengers of this court are the warden of the Flée: or the Sergeants at armes.

The Matters belonging moſt commonly, are by ſta- tutes, as is taking away of Maides within age againſt their parentes or gardians will. See Anno 4 & 5. Phil. & Mariæ cap. 18. All notable forgeries, counterfeiting letters or private tokens. See Hen. 8. Anno 33. cap. 1. Anno 5. Eliz. cap. 11. ſlandering of nobles, and ſeditious newes. See R. 2. anno 2. Cap. 5. anno 1. & 2. Phil. & Mariæ Cap. 3. anno. 2. 3. Eliz. Cap. 7. All notable Riots and unlawfull aſſemblies. See Anno 1. Eliz. cap. 17. And al the titles of Riottes in Raſſals abridgement, all notable deceiptes, and all kinde of counſe- nage &c.

Of the Courtes of Wardes and Liueries.

CHAP. 5.

HE whom we call a ward in England, is called in Latine *pupillus*, and in Greeke *ὀρφανός*. The gardian is called in Latine *tutor*, in Greeke *ἐπίτροπος*. A warde or infant is taken for a childe in baſe age, whoſe father is dead. The Romanes made two diſtinctions *pupillum* & *minorem*, the one to xiiij. yeare old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, ſo *minor* had *curatorem* till he came to the age of xxv. Theſe tutores

tutoꝝ oꝝ curatoꝝ were accountable foꝝ the reuenues of the pupils minoꝝ lands, & great pꝛouision and many lawes and oꝝders be made foꝝ them in the booke of the ciuill law, foꝝ rendering iust and true accounts. So that to be a gardian oꝝ tutoꝝ was accounted among them to be a charge oꝝ trouble, a thing subiect to much encumbrance and small pꝛofite, so that diuers meanes were sought foꝝ, to excuse men from it. With vs this is cleane contrarie, foꝝ it is reckoned a pꝛofite to haue a ward. Foꝝ the Lord of whom the Ward doth hold the land, so soone as by the death of the father the Childe falleth Ward vnto him, hee seyleth vppon the bodie of the Ward, and his landes, of which (so that hee doth nourish the Ward) he taketh the pꝛofite without accounts, and beside that, offering to his Ward couenable marriage without dispergiment befoꝝe the age of xxi. yeares if it bee a man, of fourtene if it bee a woman. If the Ward refuse to take that marriage, hee oꝝ shee must pay the value of the marriage, which is commonly rated according to the pꝛofite of his landes. All this while I speake of that which is called in French garde noble, that is of such as holde landes of other by knight seruice, foꝝ that is an other kind of seruice which we call in French gard retourier, we call it gard in socage, that is of such as doe not holde by knight seruice, but by tenure of the plough. This wardship falleth to him who is next of the kinne, and cannot inherite the lande of the Ward, as the vncle by the mothers side, if the lande doe discend by the father, and of the fathers side, if the lande discend by the mother. This gardian is accountable foꝝ the reuenues and pꝛofites of the land, as the tutoꝝ by the ciuill Lawe to the warde oꝝ pupil so soone as he is of full age.

Guardian in
Chivalrie, and
gardian in So-
cage.

The man is not out of wardshippe by our Law till xxi. yeare olde, from thence he is reckoned of full age, as-

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well as in the Romane Lawes at xxv. The woman at riiij. is out of warde, for she may haue an husbände able to doe knightes seruice, say our Bookes. And because our wiues be in the power (as I shall tell you hereafter) of their husbandes, it is no reason, she should be in two diuers gards.

Many men do esteeme this wardship by knightes seruice verie vnreasonable and vniust, and contrarie to nature, that a freeman and Gentleman should bee bought and sold like an horse or an ore, and so change gardians as maisters and Lordes: at whose gouernment not onely his bodie but his lands and his houses should bee, to be wasted and spent without accounts, & the to marie at the wil of him, who is his natural lord, or his will who hath bought him to such as hee like not peraduenture, or else to pay so great a ransome. This is the occasion they say, why many gentlemen bee so euill brought vp touching vertue and learning, and but onely in deintinesse and in pleasure: and why they bee married verie yong, and befoze they bee wise, and many times do not greatlie loue their wiues. For when the father is dead, who hath the naturall care of his Childe, not the mother, nor the vncle, nor the next of kinne, who by all reason would haue most naturall care to the bringing vp of the infant and *minor*, but the Lord of whom he holdeth his lande in knightes seruice, be it the King or Queene, Duke, Marques, or any other, hath the gouernment of his bodie, and marriage, or else who that bought him at the first, seconde, or thirde hand. The Prince as hauing so many, must needs giue or sell his wardes away to other, and so he doth. Other do but seeke which way they may make most aduantage of him, as of an Ore, or other Beaste. These all (say they) haue no naturall care of the Infant, but of their owne gaine, and especially the

the buyer will not suffer his warde to take any great paines, either in studie, or any other hardnes, least he should be sicke and die, befoze he hath married his daughter, sister, or cousin, for whose sake he bought him: and then all his money which hee paide for him should be lost. So hee who had a Father, which kept a good house, and had all thinges in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stocke wasted and gone, Lande let forth and plowed to the baren, and to make amendes, shall pay yet one yeares rent for reliefe, and sue ouster le main, beside other charges, so that not of many yeares, and peradventure neuer hee shall bee able to recouer, and come to the estate where his father left it. This as it is thought was first graunted vpon a great extremitie to king Henrie the 3. for a time vpon the warre which he had with the Barons, and afterward increased, and multiplied to more and more persons and grienances, and will bee the decay of the nobilitie and libertie of England. Other againe say, the warde hath no wrong, for either his father purchased the land, or it did discend vnto him from his ancestors with this charge. And because hee holdeth by knightes seruice, which is in armes and defence, seeing that by age hee cannot do that whereto he is bounde by his lande, it is reason hee answere that profite to the Lord, whereby hee may haue as able a man to do the seruice. The first knightes in Rome, those that were chosen *equites Romani* had *equum publicum* on which they serued, and that was at the charge of Widowes and Wardes, as appeareth by Titus Linius, because that those persons could not do bodily seruice to the Common wealth. Wherefoze this is no new thing, but thought reasonable in that most wise common wealth, and to the prudent King Seruius Tullius,

But the Lord shall be punished for the wast, by losse of the warde: or treble damages, if that suffice not.

As for the education of our common wealth, it was at the first militaire, and almost in all thinges the scope and desaigne thereof is militaire. Yet was it thought most like, that noble men, good knightes, and greate captaines would bring vp their wardes in their owne seates and vertues, and then marie them into like rase & stocke wher they may find and make friends who can better looke to the education or better skill of the bringing vp of a Gentleman, than hee who for his higher nobilitie hath such a one to holde of him by knights seruice, or would doe it better than he that looketh or may claime such seruice of his ward, when age and yeares will make him able to doe it. That which is said that this manner of Wardshippe began in the time of King Henrie the third, cannot seme true. For in Normandie and other places of Fraunce the same order is.

And that Statute made in King Henrie the thirds time touching wards, to him that will wey it wel, may seme rather a qualification of that matter, and an argument that the fashion of wardship was long befoze: but of this matter an other time shall bee moze conuenient to dispute. This may suffice to declare the manner of it.

The Judge in this Court is the maister of the Wardes.

Officers are the Atturney of the Wardes for the Quene.

The Surueyor, the Auditor, the Treasorer, the Clarke, two common Attourneies, inferiour officers, also messengers, and Pursuyantes.

The Atturney for the Wardes is alwaies for the Quenes right, and assistant with the maister of the Wardes.

The Surueior is he that hath the allowing of every Livery

Livery that is sued out.

The Auditor taketh the accompt and causeth pzoesse to be made.

The Treasorer receaueth the money due to her Maiestie.

The Clarke is wyter of the recozdes, and wyter of the decrees, pzoesses and orders of the Court.

The matters of this court are all benefites that may come vnto her Maiestie, by guard, by mariage, pzeuueer seison and reliefe.

The generall pzoesse in this court is a commission, a pzoesse in maner of a pzoclamation, warning the partie oz parties to appeare befoze the maister of y wards. More speciall pzoesse belonging to this Court, are a Diem clausit exttemum, a Deuenerunt, a melius inquirendum, a Datum est nobis intelligi, a Quæ plura. Of the nature of these, see Stanfozdes boke of the kings pzerogative.

Out of this Court are the Liveries sued, and committed to the Clarkes of the pettie bagge, officers in the Chauncerie.

When the heire hath pzoued his age, and sued his livery, then he must do homage to that is the Deputie of the Prince for that purpose, and then must pay a fine oz fee to the Lord priuite Seale.

The Duchie Court.

CHAP. 6.

The Duchie Court of Lancaster is also the Quæns court of Recozde. In it are holden all pleas real & personall which concerne any of the Duchy Landes, now in her Maiesties handes and parcel of her crowne:
but

but severed in Court and iurisdiction.

The Judge in this Court is the Chaunceloz assisted by the Atturney of the Duchie for the Quæne, & Clarke of the Court, diuers Surueyozs, two common Attur-
neies, diuers auditozs, two assistantes, the Sergeant of her Maiestie.

The Chaunceloz is a Judge of the Court to see iustice administred betwæne her maiestie and hir subiectes, and betwæne partie and partie.

The Atturney is to maintaine the Quænes right, and is assistant to the Chaunceloz, and sheweth him what the law is,

The Clarke keepeth the Rolles and recozdes, & maketh the processe.

The Surueyozs are diuers, one more principall: they suruey the Quænes landes within the Duchie.

The Auditozs are diuers: one more principall, they are to accompt and make the order of y^e receiptes within the Duchie.

The common Atturneies are for the suitozs that haue cause in action within the court.

The Assistantes are two Judges at the Common law that are to ayd them in difficult pointes of the law.

The Sergeant for the Quæne, is a learned Counsellor appointed to be of her Maiesties Counsell for her right.

There is also belonging to this court a Vice-chaunceloz, that serueth for the Countie Pallatine of Lancaster, he maketh all originall processe within his libertie, as doth the Lord Chaunceloz of England for the Chauncerie.

The processe of the County Pallatine, is a *Sub pæna*, as in the Chauncery.

The Court of requestes.

CHAP. 7.

This Court is the Court wherein all suites made to her Maiestie by way of supplication or petition are heard and ended, neither should it hold plea of any other matters then such. And this is called the poze mans court, because there he should haue right without paying any money: and it is called also the Court of Conscience.

The Judges in this court are the maister of Requestes, one for the common lawes, the other for the ciuill lawes.

The Officers in this court, are the Register, the Examinoz, thre Atturneys, one messenger or Pursuiuant.

The Examinoz is he that apposeth the witnesses by oth and recozdeh their depositions.

The Atturneys serue for the plaintife and defendant to frame their complaints and answers.

The Pursuiuant is an officer in this Court, to bring any man befoze the Judges whom they shall name.

The matters in this Court at this day, are almost all suites that by colour of equitie or supplication made to the Prince, may be brought befoze them: properly al poze mens suites which are made to her Maiestie by supplication.

The Processees in this court, are a priuie seale, proclamation of rebellion. The nature of these processees is as was said befoze in the Court of Starre chamber.

Of wiues and mariages.

CHAP. 8.

THe wiues in England bee as I saide *in potestate maritorum*, not that the husbände hath *vita ac necis potestatem*, as the Romans had in the old time of their Childzen, for that is onely in the power of the Prince, and his lawes, as I haue said befoze, but that whatsoever they haue befoze mariage, as sone as mariage is solemnised, is their husbändes, I meane of money, plate, iuelles, cattaille, and generally all moueables. For as for land and heritage followeth the succession, and is ordered by the Law as I shall say hereafter: and whatsoever they get after mariage, they get to their husbändes. They neither can giue nor sell any thing either of their husbändes, or their owne. There is no moueable thing is by the law of Englands *constanti matrimonio*, but as *speculum serui aut filij familias*: and yet in moueables at the death of her husbände she can claime nothing, but according as he shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executors, if he die testate. Yet in London and other great cities they haue that Lawe and custome, that when a man dieth, his goods be diuided into three partes. One thirde is imployed vppon the burial and the bequestes which the testator maketh in his Testament. An other third part the wife hath as her right, & the third third part is the dower and right of his childzen, equally to be diuided among them. So that a man there can make testament but of one third of his goods: if he die intestate, the funerals deducted the goods be equally diuided betwene the wife and the childzen.

By the common Law of Englande if a man die intestate, the Ordinarie (which is the Bishop by common intendment) sometime the Archdeacon, Deane, or Prebendarie by priuilege and prescription, both commit the administration of the goods to the widowe or the child, or next kinsman of the dead, appointing out portions to such as naturally it belongeth vnto, and the Ordinarie by common vnderstanding hath such grauitie and discretion as shalbe meete for so absolute an authoritie for the most part, following such diuision as is vsed in London, either by thirdes or halfes. Our forefathers newly conuerted to the Christian faith had, such confidence in their pastors and instructors, and tooke them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such as would seeke no priuate profite to themselves thereby, that being once so ordeined hath still so continued. The abuse which hath followed was in part redressed by certaine actes of Parliament made in the time of King Henrie the eight, touching the probate of Testaments, committing of administration & mortuaries. But to turne to the matter which we now haue in hande, the wife is so much in the power of her husband, that not onely her goods by marriage are streight made her husbandes, and she loseth all her administration which she had of them: but also where all English men haue name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the Font, the surname is the name of the gentilitie and stocke which the sonne doth take of the father alwaies, as the old Romans did, our daughters so soone as they be married lose the surname of their father, and of the family and stocke whereof they do come, and take the surname of their husbandes, as transplanted from their

famillie into another. So that if my wife was called before Philippe Wilford by her owne name and her fathers surname, so sone as she is married to me she is no more called Philippe Wilford, but Philip Smith, and so must she write and signe: and as she chaungeth husbandes, so she chaungeth surnames, called alwaies by the surname of her last husbände. Yet if a woman once marie a Lorde or a Knight, by which occasion she is called my Ladie, with the surname of her husbände, if hee dye, and shee take a husbände of a meaner estate by whom she shall not be called Ladie (such is the honour we do giue to women) she shall still be called Ladie with the surname of her first husband and not of the second.

Yet she is no
Ladie by the
common law,
although so
called of cour-
tesie.

I thinke among the old Romans' those mariages which were made *per coemptionem in manum*, and *per es* and *libram* made the wife *in manu & potestate viri*, where of also we had in our old lawe and ceremonies of marriage, a certaine memorie as a viewe and *vestigium*. For the woman at the Church doze was giuen of the Father, or some other man of the next of her kinne into the handes of the husbände, and he laid downe gold & siluer for her vpon the booke, as though he did buy her, the Priest belike was in steede of Liprius: our mariages be esteemed perfect by the law of England, when they be solemnised in the Church or Chappell, in the presence of the Priest and other witnesses. And this only maketh both the husband and the wife capable of all the benefites which our lawe doth giue vnto them and their lawfull Children. In so much that if I marie the Widowe of one lately deade, which at the time of her husbandes death was with childe, if the childe be borne after marriage solemnised with me, this Childe shall be my heire, and is accounted my lawfull Sonne, not his whose childe it is indeede, so precisely wee doe take

take the letter where 'it is said, *pater est quem nuptiae* It is auoida-
demonstrant. Those waies and meanes which Iustini- ble after the
 an doth declare to make bastards to be lawfull children,
 muliers for rather melieurs (for such a Terme our
 lawe vseth for them which be lawfull Children) be of
 no effect in England: neither the Pope nor Emperour
 nor the Prince himselte neuer could there legitimate
 a bastard to enioy any benefite of our Law, the Parlia-
 ment hath onely that power.

Although the wife be (as I haue written before in
manu & potestate mariti, by our Law, yet they be not
 kept so streit as in mewe, and with a garde as they be
 in Italie and Spaine, but haue almost as much liber-
 tie as in Fraunce, and they haue for the most part all
 the charge of the house and household (as it may ap-
 peare by Aristotle and Plato, the wiues of the Greekes
 had in their time) which is indeede the naturall occu-
 pation, exercise, office and part of a wife. The husband
 to meddle with the defence either by law or force, and
 with all forren matters which is the naturall part and
 office of the man, as I haue written before. And al-
 though our Lawe may seeme somewhat rigorous to-
 ward the wiues, yet for the most part they can handle
 their husbandes so well and so dulcly, and specially
 when their husbandes be sicke, that where the Law gi-
 ueth them nothing, their husbandes at their death of
 their good will giue them all. And fewe there be that
 be not made at the death of their husbandes either sole
 or chiefe executrices of his last wil and testament, and
 haue for the most part the gouernment of the Children
 and their portions: except it be in London, where a
 peculiar order is taken by the Citie much after the fa-
 shion of the ciuill Law.

All this while I haue spoken onely of moueable
 goods. If the wife be an enheritrix and bring land with
 her

It is auoidable after the husbandes death, except it be for xxj. yeares or three liues according to the statute, or except they leue a fine.

her to the mariage: that lande descendeth to her eldest sonne, or is diuided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage, or purchaseth afterwarde, the husbande can not sell nor alienate the same, no not with her consent, nor shee herselfe during the mariage, except that she be sole examined by a Judge at the common lawe: and if he haue no childe by her and she die, the land goeth to her next heires at the common law: but if in the mariage he haue a childe by her, which is hearde once to crie, whether the childe liue or die, the husbande shal haue the vsfrute of her landes, (that is the profite of them during his life) and that is called the courtiessie of England.

Like wise if the husband haue any land either by inheritance descended or purchased and bought, if hee die before the wife, she shall haue the vsfrute of one thirde part of his landes. That is, she shall holde the one thirde part of his landes during her life as her dowrie, whether he hath childe by her or no. If he hath any children, the rest descendeth streight to the eldest: if he hath none, to the next heire at the common lawe: and if she mislike the diuision, she shal aske to be indowred of the fairest of his landes to the third part.

This which I haue written touching mariage and the right in moueables and vnmoueables which cometh thereby, is to be vnderstood by the common lawe when no priuate contract is more particularly made. If there be any priuate pactes, couenants, and contracts made before the mariage betwixt the husbande and the wife, by themselves, by their parents, or their friends, those haue force and be kept according to the firmitie and strength in which they are made, And this is y-nough of wiues and mariage.

Of Children.

CHAP. 9.

Our Childre be not in *potestate parentum*, as the children of the Romans were: but as soon as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *partes parentum*. That which is theirs they may give or sell, and purchase to themselves either landes and other moveables the father having nothing to do therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sui heredes* complaints, *de inofficioso testamento* or *præteritorum liberorum non emancipatorum* have no effect nor use in our law, nor we have no manner to make lawfull Children but by marriage, and therefore we know not what is *adoptio*, nor *arrogatio*. The testator disposeth in his last will his moveable goods freely as hee thinketh meete and convenient without controulement of wife or children. And our Testaments for goods moveable be not subject to the ceremonies of the civill lawe, but made with all libertie and freedome, and *iure militari*. Of landes, as ye have understood before, there is difference: for when the owner dieth, his lande descendeth onely to his eldest sonne, all the rest both sonnes and daughters have nothing by the common lawe, but must serve their eldest brother if they will, or make what other shift they can to live: except that the father in life time doe make some conveyance and estates of part of his land, to their use, or else by devise, which word amongst our lawyers doth betoken a Testament written, sealed and delivered in the life time of the testator before witnesses: for without those ceremonies a bequest of landes is not available.

available . But by the common Law, if he that dieth had no sonnes but daughters, the land is equally diuided among them, which portion is made by agreement or by lotte . Although (as I haue said) ordinarily and by the common law, the eldest sonne inheriteth all the landes, yet in some countries all the sonnes haue equall portion, and that is called gavelkind, and is in many places in Kent . In some places the yongest is sole heire : and in some places after an other fashion . But these being but particular customes of certaine places and out of the rule of the common lawe, do litle appertaine to the disputation of the policie of the whole Realme, and may be infinite . The common wealth is iudged by that which is most ordinarily and commonly done thzough the whole Realme.

Of Bondage and Bondmen.

CHAP. IO.

A fter that wee haue spoken of all the sortes of free men according to the diuersitie of their estates and persons, it resteth to say somewhat of bondmen, which were called *serui*, which kind of people and the disposition of them and about them doth occupie the most part of Iustinians Digestes, and Code . The Romanes had two kindes of bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by other kinde and lawfull acquisition, or else borne of their bonde women and called *verna* : all those kinde of bondmen be called in our lawe villayns in grosse, as ye would say immediatly bonde to the person and his heirs . An other they had (as appeareth in Iustinians time) which they called *adscripti glebae* or *agri censiti*. These

These were not bond to the person, but to the mannoꝝ
oꝝ place, and did folloꝝ him who had the mannoꝝs, and
in our law are called villaines regardantes, foꝝ because
they bee as members, oꝝ belonging to the mannoꝝ oꝝ
place. Neither of the one soꝝt noꝝ of the other haue wee
any number in England. And of the first I neuer knew
any in the Realme in my time: of the seconde so fewe
there be, that it is not almost woꝝth the speaking, but
our lawe doeth acknowledge them in both those soꝝts.

Manumission of all kinde of villaines oꝝ bondemen
in England, is vsed and done after diuers soꝝtes, and
by other, and moze light and easie meanes than is pre-
scribed in the Ciuill lawe, and being once manumit-
ted, he is not libertus manumittentis, but simplie li-
ber, howbeit, since our Realme hath receiued the chri-
stian religion, which maketh vs all in Chꝛist bꝛe-
thren, and in respect of God and Chꝛist, conseruos,
men began to haue conscience to holde in captiuitie, and
such extreme bondage, him whom they must acknow-
ledge to be his bꝛother, and as wee vse to terme him,
Christian, that is, who looketh in Chꝛist, and by Chꝛist
to haue equall poꝝtion with them in the Gospel and sal-
uation.

Upon this scruple, in continuance of time, and by
long succession, the holy fathers, Bunkes and Fryers,
in their confession, and specially in their extream and
deadly sicknesses, burdened the consciences of them
whom they had vnder their hands: so that tempoꝝall
men by little and little, by reason of that terroꝝ in their
conscience, were glad to manumitte all their villaines:
but the said holy Fathers, with the Abbots and Pꝛioꝝs,
did not in like soꝝt by theirs, foꝝ they had also consci-
ence to empouerish and dispoyle the Churches so much
as to manumit such as were bond to their Churches, oꝝ
to the mannoꝝs which the Church had gotten, and so

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kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a peece of money) manumitted theirs, partly for argent, partly for slaunders, that they seemed more cruell than the tēporaltie: after the Monasteries comming into temporall mens hands, haue bene occasion that now they bee almost all manumitted. The most part of bondement when they were, yet were not vsed with vs so cruellie nor in that sort as the bondmen at the Romane ciuill law, as appeareth by their comedies: nor as in Græce, as appeareth by theirs: but they were suffered to enioye copihold land, to gaine and get as other serues, that now and then their Lords might flæse them, and take a peece of money of them, as in Fraunce the Lords doe taile them whom they call their subiects, at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in France and England, the change of religion, to a more gentle, humane, and more equall sort, (as the Christian religion is in respect of the Gentiles,) caused this olde kinde of seruite seruitude and slauerie, to be brought into that moderation, for necessitie first to villaines regardants, and after to seruitude of lands and tenures, and by little and litle finding out more ciuil and gentle meanes, and more equall to haue that done which in time of heathenesse, seruitude or bondage did, they almost extinguished the whole. For although all persons Christiāns be brethren by baptisme in Iesu Christ and therefore may appeare equally free, yet some were, and still might be christened being bond and serue, and whom as the baptisme did finde, so it did leaue them, for it changeth not ciuill lawes nor compactes amongst men which be not cōtrarie to Gods lawes, but rather main-taineth them by obedience.

Which saying men of good conscience hauing that
scruple

scruple whereof I wrote before, haue by little and little found meanes to haue and obtaine the profite of seruitude and bondage which gentilitie did vse, and is vsed to this day amongst Christians on the one part, & Turkes and Gentiles on the other part, when warre is betwixt them vpon those whom they take in battaile. Turkes and Gentiles I call them, which vsing not our Lawe the one belæueth in one God, the other in many Gods, of whome they make images. For the lawe of Iewes is well inough known, and at this day so farre as I can learne, amongst all people Iewes be holden as it were in a common seruitude, and haue no rule nor dominion as their owne prophesies doe tel, that they should not haue, after that Christ promised to them, was of them refused: for when they would not acknowledge him, obstinately forsaking their helpe in soule for the life to come, and honoꝛ in this woꝛld for the time present, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophets fructified in vs which be Gentiles, and brought forth this humanitie, gentlenesse, honoꝛ, & godlie knowledge which is seene at this present. But to returne to the purpose.

This perswasion I say of Christians, not to make nor keepe his brother in Christ, seruile, bonde and vnderling for euer vnto him, as a beast rather than as a man, and the humanitie which the Christian Religion doeth teach, hath engendred through Realmes (not nære to Turkes and Barbarians) a doubt, a conscience and scruple to haue seruants and bondmen: yet necessitie on both sides, of the one to haue helpe, on the other to haue seruice, hath kept a figure or fashion thereof. So that some would not haue bondmen, but adscripticii glebæ, and villaines regardant to the ground,

to the intent their seruice might be furnished, and that the countrey being euill, vnholseme, and otherwise barren, should not be desolate. Others afterwards founde out the wayes and meanes, that not the men, but the land should be bound, and bzing with it such bondage and seruice to him that occupieth it, as to carie Lords dung vnto the fields, to plowe his ground at certaine dayes, so we, reape, come to his Court, sweare faith vnto him, and in the end to hold the land but by copie of the Lords Court rolle, and at the will of the Lord.

This tenure is called also in our lawe, villayne, bonde, or seruite tenure, yet to consider more deeply all land, euen that which is called most free land, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water & filth which falleth from the higher ground, noz such as Iust nian speaketh of, de seruitudinibus prædiorum rusticorum & vrbanoꝝ, but the land doeth bzing a certaine kind of seruitude to the possessor. For no man holdeth land simply free in England, but he or shee that holdeth the crowne of Englād: all others hold their land in fee, that is, vpon a faith or trust, and some seruice to be done to another Lord of a mannoꝝ, as his superioꝝ, and he againe of an higher Lord, till it come to the pꝛince, and him that holdeth the crowne.

So that if a man die, and it be founde that hee hath land which he holdeth, but of whom no man can tell, this is vnderstode to be holden of the crowne, and in capite, which is much like to knights seruice, and draweth vnto it thꝛee seruices, homage, warde, and mariage: that is, he shall sweare to be his man, and to be true vnto him of whom he holdeth the land, His sonne who holdeth the land after the death of his father, shall be married where it pleaseth the Lord.

He y holdeth the land must freely of a temporal man (for franke almosse and franke mariage hath another cause and nature) holdeth by fealtie onely, which is, he shall sweare to be true to the Lord, and doe such service as appertayneth for the lande which hee holdeth of the Lord.

So that all free land in England is holden in fee, or feodo, which is as much to say, as in fide, or fiducia. That is, in trust and confidence, that he shall be true to the Lord of whom he holdeth it, pay such rents, do such service, and observe such conditions as were annexed to the first donation. Thus all saving the Prince bee not veri domini, but rather fiduciarii domini, and possessores,

This is a more likely interpretation then y which Littleton doeth put in his booke, who saith that feodum, idem est quod hereditas, which it doeth betoken in no language. This hapneth many times to them who bee of great witte and learning, yet not seene in many tongues, or marke not the deduction of wordes which time doeth alter. Fides in latine the Gothes coming into Italie, and corrupting the language, was turned first into fede, and at this day in Italie they will say in fide, en fede, or ala fe. And some uncutting Lawyers that would make a new barbarous latine worde, to betoken land geuen in fidem, or as the Italian saith, in fede, or fe made it in feudum, or feodum. The nature of the word appeareth more euident in those which we cal to fef, feoff, or feoffees, the one be fiduciarii possessores, or fidei commissarii. y other is, dare in fiduciam, or fidei commissum, or more latinely, fidei committere.

Littleton did not interpret the word feodum simplex, but rather define or describe the nature thereof.

The same Littleton was as much deceived in withernam, & diuers other old wordes. This withernam is

be interpreted *vetitum narium*, in what language I know not: whereas in truth it is in plaine Dutche, & in our olde Saxon language, wyther *nempt*, *alterum accipere*, or *vicissim rapere*, a worde that betokeneth that which in barbarous Latine is called *represalia*, when one taking of me a distresse, which in Latine is called *pignus*, or any other thing, and carrying it away out of the iurisdiction wherein I dwell, I take by order of him that hath iurisdiction, another of him again or of some other of that iurisdiction, and doe bring it into the iurisdiction wherein I dwell, that by equall wrong I may come to haue equall right. The maner of *represalia*, and that we call *withernam*, is not altogether one: but the nature of them both is as I haue described, and the proper signification of the wordes doe not much differ.

But to returne thether where we did digresse: ye see that where the persons be free, and the bodies at full libertie, and maxime *ingenui*, yet by annexing a condition to the land, there is meanes to bring the owners and possessors thereof into a certaine seruitude, or rather libertinitie: That the Tenants beside paying the rent accustomed, shall owe to the Lord a certaine faith, due tie, trust, obedience, and (as we terme it) certaine seruice, as *Libertus*, or *Cliens patrono*: which because it doeth not consist in the persons, for the respect in them doth not make them bonde, but in the land & occupation thereof, it is more properly expressed in calling y^e one *tenant*, the other Lord of y^e fee, then either *libertus* or *cliens* can doe the one, or *patronus* the other: for these wordes touch rather y^e persons, & the office & duty betwene them than the possession. But in our case leaving the possession & land, all the obligation of seruitude and seruice is gone.

An other kinde of seruitude or bondage is vsed in England for the necessitie thereof, which is called *apprenti*

prenticehood. But this is onely by covenant, and for
 a time, and during the time it is *vera servitus*. For
 whatsoener the apprentice getteth of his owne labour,
 or of his maisters occupation or stocke, he getteth to
 him whose apprentice hee is, he must not lie forth of
 his maisters dozes, he must not occupie any stocke of his
 owne, nor mary without his maisters licence, and
 he must doe all servile offices about the house, and bee
 obedient to all his maisters commaundementes, and
 shall suffer such correction as his maister shall thinke
 meet, and is at his maisters cloathing and nourishing,
 his maister being bounde onely to this which I have
 said, and to teach him his occupation, and for that hee
 serueth, some for seven or eight yeares, some nine or
 tenne yeares, as the maisters and the friendes of the
 young man shall thinke meete, or can agree: altogether
 (as Polidore hath noted) *quasi pro emptitio seruo*:
 neuerthelesse that neither was the cause of the name
 Apprentice, neither yet doeth the worde betoken that
 which Polidore supposeth, but it is a French word, and
 betokeneth a learner or scholer.

Apprendre in French is to learne, and Appren-
 tise is as much to say in French (of which tongue
 wee borrowed this worde, and many moze other,) as
discipulus in Latine: Likewise he to whom hee is
 bounde, is not called his Lord, but his master, as ye
 would say, his Teacher. And the pactions agreed up-
 on, be put in writing, signed and sealed by the parties,
 and registred for moze assurance: without being such
 an Apprentice in London, and serving out such a servi-
 tude in the same Citie for the number of yeares agreed
 upon, by order of the Citie amongst them, no man bee-
 ing neuer so much borne in London, and of parents
 Londoners, is admitted to bee a Citizen or free man of
 London: the like is used in other great Cities of Eng-
 land.

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The sonnes of
freemen of
London are
also free by
byrth, accord-
ing to the
custome.

land. Besides appzrentises, others be hyred for wa-
ges, and be called seruants, or seruing men and wo-
men throughout the whole Realme, which be not in
such bondage as appzrentises, but serue for the time for
dayly ministerie, as serui and ancillæ did in the time of
gentilitie, and be for other matters in libertie as full free
men and women.

But all seruants, labourers, and others not married,
must serue by the yeare: and if he be in couenāt, he may
not depart out of his seruice without his masters licence,
and he must geue his master warning that hee will de-
part, one quarter of a yeare before the terme of y^e yeare
expireth, or els he shall be compelled to serue out ano-
ther yeare. And if any young man vnmarried be without
seruice, he shall be compelled to get him a master, whom
he must serue for that yeare, or els he shall be punished
with stockes and whipping, as an idle vagabond. And
if any man, married or vnmarried, not hauing rent or li-
uing sufficient to maintaine himselfe, doe liue so idlie, he
is enquired of, and sometime sent to the gaole, sometime
otherwise punished as a sturdie vagabond: so much our
politic doeth abhorre idlenes. This is one of the chiefe
charges of the Iustices of peace in every shire. It is ta-
ken for vngentlenes and dishonour, and a shew of enmi-
tie, if any gentleman doe take another gentlemans ser-
uant (although his master hath put him away) without
some certificate from his master, either by word or wri-
ting, that he hath discharged him of his seruice. That
which is spoken of men seruants, the same is also spokē
of women seruants. So that all youth that hath not suf-
ficient reuenues to maintaine it selfe, must needes with
vs serue, and y^e after an order as I haue written. Thus
necessity & want of bondmen hath made men to vse free
men as bondmen to all seruile seruices: but yet more li-
berally and freely, and with a more equalitie and mode-

rati-

ration, than in time of gentilitie. Slaues and bondmen were wont to bee vsed, as I haue said befoze. This first and latter fashon of tempoꝛall seruitude, and vpon paction is vsed in such countries, as haue left off the old accustomed manner of seruauntes, slaues, bondmen, and bondwomen, which was in vse befoze they had receiued the Christian faith. Some after one sozt, and some either moze oꝛ lesse rigoꝛouslie, according as the nature of the people is enclined, oꝛ hath deuised amongst themselves foꝛ the necessitie of seruiſe.

Of the court which is Spirituall or Ecclesiastical, and in the booke of Law, Court Christian, Curia Christianitatis.

CHAP. II.

The Archbishops and Bishops haue a certaine peculiar iurisdiction vnto them especially in four manner of causes: Testamentes and legations, Witches and moztuaries, mariage and adulterie oꝛ foꝛnication, and also of such thinges as appertaine to oꝛders amongst themselves and matters concerning religion. Foꝛ as it doth appeare, our ancestoꝛs hauing the commonwealth befoze oꝛdeined and set in frame, when they did agree to receaue the true and Christian religion, that which was established befoze, and concerned externe policie (which their Apostles, Doctoꝛs, and Preachers did allowe) they helde and kept still with that which they bzought in of newe. And those thinges in keeping whereof they made conscience, they committed to them to bee oꝛdered and gouerned as such thinges of which they had no skill, & as to men in whom foꝛ the holinesse of their life and good conscience, they had a great and sure confidence. So these matters

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be

I. Aspinwall.

be ordered in their Courtes, and after the fashion and maner of the law ciuill or rather common by citation, libell, *contestationem litis*, examination of witnesses priuily, by exceptions, replications apart and in wryting, allegations, matters by sentences given in wryting, by appellations from one to an other as well *a gramine* as *a sententia definitiua*, and so they haue other names, as Doctors, Advocates, Assessors, Ordinaries, and Commissaries, &c. farre from the maner of our order in the common law of Englande, and from that fashion which I haue shewed you before. Wherefore if I say the Testament is false and forged, I must sue in the spirituall Law, so also if I demaunde a legacie: but if I sue the Executor or Administrator, which is he in our Lawe, who is in the ciuill Lawe *heres*, or *bonorum mobilium possessor ab intestato*) for a debt which the dead ought me, I must sue in the temporall Court.

These two courtes the Temporall and the Spirituall, be so diuided, that whosoever sueth for any thing to Rome or in any spirituall court for that cause or action which may bee pleaded in the temporall Court of the Realme, by an olde lawe of Englande hee falleth into a *premunire*, that is, he forfeitteth all his goods to the Prince, and his bodie to remaine in Prison during the Princes pleasure: and not that onely, but the Judge, the Scribe, the Procurer and Assessor which receiueth and doth maintaine that vsurped pleading, doth incur the same daunger. Whether the word *premuniri* doth betoken that the authoritie & iurisdiction of the Realme is prouided for before, and defended by that Law, and therefore it hath that name *premunire* or *premuniri*, or because that by that Lawe such an attemptor hath had warning giuen before to him of the daunger into which he falleth by such attempt, and then *premunire* is barbarouslie wrytten for *pramonere*, *pramoneri* (as some men

men haue helde opinion) I wil not define, the effect is as I haue declared: and the Lawe was first made in king Richard the secondes time, and is the remedie which is vsed when the spirituall iurisdiction will goe about to encroach any thing vpon the tempoꝛall courts. Because this court oꝝ foꝛme which is called *curia christianitatis*, is yet taken as appeareth foꝛ an externe and foꝛaine court, and differeth from the policie and manner of gouernment of the Realme, and is an other court (as appeareth by the acte and writ of *præmunire*,) than *curia regis aut regine*: Yet at this pꝛesent this court as well as others, hath her foꝛce, power, authoritie, rule and iurisdiction, from the royall maiestie, and the crowne of England, & from no other foꝛain potentate oꝝ power vnder God, which being graunted (as in deede it is true) it may now appeare by some reason that the first statute of *præmunire* whereof I haue spoken, hath now no place in England, seeing there is no pleading *alibi quam in curia regis ac regine*.

I haue declared summarilie as it were in a chart oꝝ mappe, oꝝ as Aristotle termeth it *πολιτικόν* the foꝛme and manner of gouernement of Englande and the policie thereof, and sette befoꝛe your eies the pꝛincipall pointes wherein it doth differ from the policie oꝝ gouernement at this time vsed in Fraunce, Italie, Spaine, Germanie and all other Countries, which do follow the ciuill Law of the Romanes compyled by Iustinian into his pandectes and code: not in that sort as Plato made his common wealth, oꝝ Xenophon his kingdome of Persia, noꝝ as Sir Thomas More his vtopia being fayned commonwealths, such as neuer was noꝝ neuer shall be, vaine imaginations, phantasies of Philosophers to occupie the time, and to exercise their wits: but so as England standeth, and is gouerned at this day the xxvij. of March Anno 1565. in the vij.

James Gurne 1757

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yeare of the raigne and administration thereof by the most vertuous and noble Quene Elizabeth, daughter to King Henrie the eight, and in the one & fiftieth yeare of mine age, when I was ambassadoꝝ foꝛ her maiestie in the Court of Fraunce, the scepter whereof at that time the noble Prince and of great hope Charles Maximilian did hold, hauing then raigned foure yeares. So that whether I wꝛit true oꝛ not, it is easie to bee seene with eies (as a man would say) and felt with handes. Wherefoꝛe this being as a pꝛoiect oꝛ table of a common wealth truly laid befoꝛe you, not fained by putting a case: let vs compare it with common wealthes, which be at this day in esse, oꝛ do remaine described in true histories, especially in such pointes wherein the one differeth from the other, to see who hath taken righter, truer, and moze commodious way to gouerne the people aswell in warre as in peace. This will be no illiberrall occupation foꝛ him that is a Philosopher, and hath a delight in disputing, noꝛ vnprofitable foꝛ him who hath to do and hath good wil to serue the Prince and the common wealth in giuing counsell foꝛ the better administration therof.

Thomas Smith.

I read this booke yunto April 1654

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Maner of Governmen

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